

24, 1948

No. 60 of 1946.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF PALESTINE
COURT OF APPEAL.

UNIVERSITY OF LONDON
W.C.1.

- 3 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

HASSAN IBN OMAR EL ZEIDEH - - - *Appellant*

AND

ROSE and EDMUND ALEXANDER - - - *Respondents.*

14218

RECORD OF PROCEEDINGS.

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In the Privy Council.

ON APPEAL, FROM THE SUPREME COURT OF PALESTINE, SITTING AS A COURT OF APPEAL.

BETWEEN

HASSAN IBN OMAR EL ZEIDEH - - - *Defendant-Appellant*

AND

ROSE and EDMUND ALEXANDER - - - *Plaintiffs-Respondents*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
<i>IN THE LAND COURT, HAIFA.</i>			
1	Statement of Claim	3rd April 1935 ..	1
2	Defence	26th December 1937	2
3	Record of the Land Court (including hearings before Shaw and Shems JJ., Edwards and Atallah JJ., and Weldon and Atallah JJ.) Judges Notes	9th December 1937 to 31st July 1943	3
<i>Defendant's Evidence.</i>			
3 (a)	Joseph Hazboun	14th February 1938	5
3 (b)	Husni Jarrah	5th April 1938 ..	6
3 (c)	Raif Eff. Afghani	5th April 1938 ..	9
<i>Plaintiffs' Evidence.</i>			
3 (d)	Labib Hawa	25th April 1941 ..	16
3 (e)	Saleh Eff. Hakim	25th April 1941 ..	16
3 (f)	Faik Halazoun	25th April 1941 ..	17

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
3 (g)	Nicola Hawa	25th April 1941 ..	17
3 (h)	Elias Mansour	25th April 1941 ..	17
3 (i)	George Farazli	25th April 1941 ..	18
3 (j)	Saydeya Ben Abraham Paz	25th April 1941 ..	20
3 (k)	Jowdad Murtada Qassimi	18th January 1943	22
3 (l)	Itzhaq Pesach Rosenberg	11th March 1943 ..	22
3 (m)	Muhammad Abdul Razzaq Khoury	11th March 1943 ..	23
	<i>Defendant's Evidence.</i>		
3 (n)	Abdo Shahin Jabr	16th June 1943 ..	24
3 (o)	Victor Bishara Mudawwar	16th June 1943 ..	25
3 (p)	Mikhail Majeed Abu Fadhl	16th June 1943 ..	25
3 (q)	Ali Saleh Othman	16th June 1943 ..	26
3 (r)	Hisni Jarrah	23rd July 1943 ..	26
3 (s)	Izchak Komornik	23rd July 1943 ..	27
3 (t)	Abdullah Jubran	23rd July 1943 ..	27
3 (u)	Yousef Elias Majdalani	23rd July 1943 ..	28
3 (v)	Muhammad Khoury	23rd July 1943 ..	28
3 (w)	Joseph Grad	23rd July 1943 ..	28
3 (x)	Rajeh Saleem El Rais	23rd July 1943 ..	29
3 (y)	Hassan Khalil Timsah	30th July 1943 ..	29
3 (z)	Itzhak Ben Dov Rabinovitch	30th July 1943 ..	30
3 (aa)	Khalil Anwar Fakhoury	30th July 1943 ..	30
3 (ab)	Suleiman Haj Faris El Kurdi	30th July 1943 ..	31
3 (ac)	Auwad Nakhleh Souri	30th July 1943 ..	31
3 (ad)	Gaspar Aghajanian	30th July 1943 ..	31
4*	Application by Dr. Weinshall for the summoning of witnesses and for evidence to be taken on commission	14th April 1938 ..	34
5*	Report of the referee Mr. Saleh Hakim	5th May 1940 ..	35
6*	Motion by Dr. Weinshall for the hearing of four witnesses on commission	17th May 1940 ..	38

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
7	Affidavit sworn by Malakeh Khoury Touma, attached to Dr. Weinshall's motion of 17th May 1940 in L.C. 22/35	28th July 1937 ..	39
8*	Application for leave to take the evidence of Malakeh Khoury Touma on commission	15th April 1942 ..	40
9*	Affidavit sworn by Dr. Weinshall attached to the above motion of 15th April 1942	11th November 1941	40
10*	Record of hearing of the above motion	28th May 1942 ..	42
11	Judgment of the Land Court	15th September 1943	43
	<i>IN THE SUPREME COURT OF PALESTINE SITTING AS A COURT OF APPEAL.</i>		
12	Notice and Grounds of Appeal	11th October 1943	48
13	Judgment of the Supreme Court of Palestine	28th July 1944 ..	52
14*	Order	27th February 1945	56
15	Order granting Final Leave to Appeal	6th June 1945 ..	57

EXHIBITS.

EXHIBIT NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
	<i>Plaintiffs' Exhibits.</i>		
A	Extract of Registration No. 2318, from the Land Registry, Haifa, referred to in Statement of Claim and therein marked " A "	28th September 1933	81
F.H.1	True copy of the entry in the Register of Criminal Cases of the Magistrate's Court, Haifa, in respect of Case No. 698/30	29th May 1930 ..	76
L.H.1	Certified true copy of Report of Dispossession in Execution File No. 4199/28	31st May 1924 ..	67
L.H.2	True copy of another Report of Dispossession in the same Execution File	8th April 1929 ..	74
P/1	Plan of land referred to in the Statement of Claim, therein marked " B "	—	82
P/3—R/11	Certified copy of petition by George Farazli to Magistrate, Haifa, with undertaking by Hassan Zeideh before the Police Inspector	8th March 1922 ..	65
P/4	Certified copy of document signed by Hassan Zeideh in Land Registry, File No. 3765/35, Haifa ..	2nd December 1936	83

EXHIBIT NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
R/12	Certified copy of Supreme Court Judgment in Land Appeal No. 76/25	1st April 1926 ..	70
R/13	Certified copy of judgment of Land Court, Haifa, in Land Case No. 9/24	29th September 1926	71
R/14	Certified copy of Supreme Court Judgment in Land Appeal No. 4/27	20th September 1927	72
S.H.2	Certified copy of Judgment in Cr. A. 27/30	3rd October 1930	77
—	Attested copy of Record of Criminal Case 270/21 before Magistrate's Court, Haifa	11th-12th April 1921	59
	<i>Defendant's Exhibits.</i>		
D/2	Hijeh Sharieh of Abdo Jabr, dated 9 Nissan, 1332 (Maliyeh)	April 1915 ..	58
D/3	Extract from Land Registry, Haifa	21st February 1922	63
D/4	Certified copy of Mukhtar's Certificate in Land Registry File No. 1521/33	26th September 1933	79
D/5	Certified copy of Werko Certificate in Land Registry File No. 1521/33	27th September 1933	80
D/12	True copy of original Power of Attorney in Magistrate's Court File No. 2729/32, created by Malakeh Khoury Touma	19th November 1924	69
D/15	Certified copy of Report by J. Grad	24th July 1924 ..	68
D/16	True copy of Werko Register—Extract of Billan Locality	22nd July 1943 ..	84
D/17	Certified copy of Extract from Register of Urban Property Tax	20th November 1933	66
D/19	Certified copy of Dr. Weinshall's Application ..	31st December 1928	73
D/20	Certified copy of Application by Hassan Zeideh in Execution File No. 4199/28	1st July 1930 ..	76
D/22	High Court Order in High Court 67/31	25th February 1932	78
D/23	High Court Order in High Court 12/30	3rd April 1930 ..	75

* Documents included at the request of Attorney for Respondents, Attorney for Appellants objecting.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF PALESTINE, SITTING
AS A COURT OF APPEAL.

BETWEEN

HASSAN IBN OMAR EL ZEIDEH

Appellant

AND

ROSE and EDMUND ALEXANDER

- *Respondents.*

10 RECORD OF PROCEEDINGS.

No. 1.

STATEMENT OF CLAIM.

*In the
Land Court,
Haifa.*

IN THE LAND COURT HAIFA.

Haifa, 3.4.1935.

In Proceedings :—

No. 1.
Statement
of Claim,
3rd April
1935.

ROSE ALEXANDER & EDMUND ALEXANDER
of Cairo, Egypt, represented by Dr. A. Weinshall,
Advocate, Haifa

Plaintiff

V.

20 HASSAN IBN OMAR EL ZEIDEH

Defendant.

1. The Plaintiffs are the owners of 14 shares out of 96 shares in a plot of land situated in the locality of Ballan in Haifa bounded :

North : Hanna Atallah & Bishara Mudawar to day road ;

South : Attallah & Mudawar to day Mohammad Taha

East : E. Salha to day Gybrail Anton Khoury

West : Road opposite Dakhil

in conformity with certificates of registration Nos. 2318 dated 28.9.33 (as per Land Registry Extract attached—Exh. A).

2. The said plot of land is more fully shown on the attached map
30 (Exh. B).

3. The right of ownership of the Plaintiffs is unlawfully contested by the Defendant.

*In the
Land Court,
Haifa.*

No. 1.
Statement
of Claim,
3rd April
1935,
continued.

4. It is prayed therefore that a copy of the present together with copies attached be served on the Defendant, a hearing of this case be fixed, parties be summoned to appear, personally or through their attorneys, and a judgment be given to the effect that the Plaintiffs are entitled to 14 shares out of 96 shares in the land in dispute and that the Defendant is not entitled to contest their ownership in respect thereof and that the Defendant shall pay the legal costs and advocate's fees.

(Sgd.) A. WEINSHALL

Attorney for the Plaintiffs.

No. 2.
Defence,
26th
December
1937.

No. 2.

10

DEFENCE.

(Translation from Arabic.)

IN THE LAND COURT HAIFA.

LAND CASE NO. 22/33.

26th December, 1937.

ROSE and EDMUND ALEXANDER represented
by Dr. Weinshall, Advocate, Haifa Plaintiff

v.

HASSAN IBN OMAR EL ZEIDEH, represented
by Hanna Eff. Asfour, Advocate, Haifa Defendant. 20

1. Plaintiff's action cannot be entertained because of its ambiguity. as the extracts and Kushan produced do not give the description of the land and its present locality, and I therefore cannot reply in a conspicuous manner to Plaintiff's action.

2. Defendant is unable to verify from the case submitted the veracity of his dispute with the Plaintiff, because the Defendant has been in possession of the land since a very long time. From the action lodged and the documents produced, he is unable to state whether the land which he possesses is the land in which the Plaintiff claims a masha' share. 30

3. If the land referred to in the Kushan and plan produced, which were submitted by the Plaintiff, is the same land as that in the possession of the Defendant, the Defendant alleges that Plaintiff's claim cannot be entertained because of prescription of Defendant's possession of the said land. Defendant is able to prove this possession, if it be denied by the Plaintiff, by the evidence of witnesses and official documents.

Therefore, I pray that Plaintiff's action be dismissed because of ambiguity therein, and in the alternative I ask for permission to adduce my evidence on prescription.

(Sgd.) H. ASFOUR

40

Counsel for Defendant.

No. 3.

RECORD of the Land Court (including hearings before Shaw and Shems JJ., Edwards and Atallah JJ., and Weldon and Atallah JJ.).

*In the
District
Court of
Haifa.*

IN THE DISTRICT COURT OF HAIFA.

LAND CASE No. 22/35.

Before : The R/PRESIDENT (Shaw, J.) and AARON SHEMS, J.

In the Case of :—

ROSE ALEXANDER and EDMUND ALEXANDER
of Cairo, Egypt

- Plaintiffs

10

v.

HASSAN IBN OMAR EL ZEIDEH

- Defendant.

Nature of Claim :—Ownership—14 shares out of 96 in a plot of land.

9.12.37.

For Plaintiffs :—Dr. A. Weinshall, of Haifa, advocate.

For Defendant :—Yusef Mustafa Hinsi, clerk of Mr. George Mu'ammam
produces a medical certificate for the Defendant himself.

ORDER :—To be adjourned to a date to be fixed by the Registrar—the
earliest available date after 18/12 should be fixed.

(Sgd.) AARON SHEMS.

(Sgd.) B. V. SHAW, R/P.

No. 3.
Record of
the Land
Court
(including
hearings
before
Shaw and
Shems, JJ.,
Edwards
and
Atallah JJ.,
and
Weldon and
Atallah
JJ.) from
9th
December
1937 to
31st July
1943.
—
Judges
Notes.

20

Case fixed for Monday, 3rd January, 1938, at 9 a.m. The
Defendant to be notified, Dr. Weinshall is notified in person.

9.12.37.

(Sgd.) J. HABIBY, Registrar.

3.1.38. Court as before.

Dr. Weinshall for Plaintiff.

Mr. Asfour for Defendant.

30 Mr. ASFOUR : Preliminary objection to Statement of Claim. It is
not sufficiently definite in its description of the land. The land is claimed
to be in the Municipal Area of Haifa. Urban property tax is leviable in
Haifa, and for purposes of this tax every piece of land has a block and
parcel number. There must first be produced a plan showing the block
and parcel, to enable the Court and Defendant to verify the Statement
of Claim. Plan should have been done by a licensed surveyor, and this
should appear on the face of the plan. The Survey of Lands Ordinance.
I allege that my client has been paying urban property tax on land in
his possession. No triangular point is shown on this plan.

40 Dr. WEINSHALL : I have given description of the land by giving
Kushan, and plan prepared by licensed surveyor. Defence is mala fide.
Defendant knows where the land is. Action was brought against Defendant
by one of the co-owners in respect of this land. Case No. 270/21. Judgment
was given against the Defendant for recovery of possession, and Defendant
vacated the land, but later he applied to the High Court on the ground
that the then Plaintiff had only 9 shares mushaa, and the High Court
held that the judgment should be executed only in respect of the then

*In the
District
Court of
Haifa.*

No. 3.
Judge's
Notes,
continued.

Plaintiff's nine mushaa shares. Land Case 9/24 was brought by present Defendant against the Plaintiff (Nazira Cook) to have the land registered in his name by virtue of prescription and possession. Present Defendant lost that case and Nazira Cook entered his action for possession and got possession. The Defendant applied for registration of this land (the whole land) in file No. 573/23 of the Land Registry of Haifa, but he did not obtain registration. A further case (No. 5226/35) is pending in Haifa Magistrate's Court and Defendant asked to be joined as a third party. In file 3765/35 of the Land Registry, Haifa, the Defendant waived his objection as far as Shouqouri's shares were concerned. Shouqouri was 10 one of the co-owners, who sold his shares to Mr. Muammar.

To Court : I could give the block and parcel number if given time.

Land has not yet been partitioned. If necessary, the Court can inspect the land.

Mr. ASFOUR : I know that this land has been a source of bother to my client for a long time, but I do not know the Plaintiff. He has not appeared at any stage of the proceedings previously. Plaintiff must produce an up to date description of the land.

(NOTE : Defence was only filed about three days ago.)

Article 2 of the Tabu Regulations. Since it is admitted by the 20 Plaintiff's attorney that land has been in the Defendant's possession since 1921, the Plaintiff and his predecessor in title were not in possession in 1933 when the sale to Plaintiff was made. If they were not then the transaction of sale to the Plaintiff was illegal and fraudulent. Art. 3 of the Tabu Regulations. Defendant has never left the land—up to the present date. When I am cited as a proper party to the proceedings, I shall enquire into the Plaintiff's root of title. Plaintiff's root of title is illegal, unlawful, and based on a fraudulent document.

HELD :—In view of the fact that the Plaintiff has filed a Khusan which gives the boundaries of the land, and also a map which shows 30 its boundaries, we find that the land is sufficiently well described, and we dismiss the preliminary objection.

(Sgd.) AARON SHEMS 3.1.1938 (Sgd.) B. V. SHAW, R/P.

Mr. ASFOUR : I plead that the Plaintiffs are not bona fide purchasers, because Defendant has been in possession since 1921. Art. 3 of the Tabu Regulations makes it imperative on every transfer of land to obtain a certificate that he is in actual possession from the Imam and Mukhtars of his quarter or village. At the time when the sale took place to the Plaintiffs no such certificate was produced. The certificate was signed by a Mukhtar and two men, all of Haifa. Neither the vendor nor the purchaser were from Haifa. The law says from *his* quarter or village. 40 Alternatively, as regards this certificate—the three men who signed it did not say, in their certificate, that the vendor was actually in possession. Alternatively—the certificate was fraudulent—to the knowledge of the vendor and purchasers. Case of *Nader v. Karman*, Supreme Court. Root of title includes possession. Art. 70 of the Land Code.

Dr. WEINSHALL : Under the law the question of prescription should be taken first. If Defendant relies on prescription this point should be taken first.

In the District Court of Haifa.

HELD :—The following issues are before the Court :—

1. Had the Plaintiffs a good legal title to the land ? (Onus on Defendant.)
2. Has that title become barred by the possession of the Defendant for the prescriptive period ? (Onus on Defendant.)

No. 3.
Judge's Notes,
continued.

Dr. WEINSHALL asks from what date possession is alleged.

10 Mr. ASFOUR : From before the war.

Dr. WEINSHALL : I reserve my right to produce rebutting evidence on each issue.

ORDER :—Mr. Asfour to file his list of witnesses, and his documents, within 10 days.

Further date to be fixed by the Registrar.

(Sgd.) AARON SHEMS 3.1.1938 (Sgd.) B. V. SHAW, R/P.

Case fixed for Monday, the 14th day of February, 1938, at 8.30 a.m. Both parties were notified.

3.1.1938.

(Sgd.) J. I. HABIBY

Registrar.

20 14.2.38. Court as before.

For Plaintiffs—Dr. Weinshall.

For Defendants—Mr. Muammar, by delegation from Mr. Asfour.

Mr. MUAMMAR : Most of the witnesses have not appeared as it is the feast. I have no witnesses here at all.

(NOTE : Mr. Hazboun appears in Court at this point.)

Mr. Muammar calls—

D.W.1. JOSEPH HAZBOUN. Sworn.

Defendant's Evidence.

30 I am a Government Officer in the Urban Property Tax Section of the District Commissioner's Office. I am an engineer, but am working as a surveyor in this Section. I produce the Urban Property Tax Plan of Block 64 of Haifa Town. (Exh. D/1.) It shows every parcel in the Block. Here is Parcel No. 3. Parcel 3 on Ex. D/1 corresponds to the portion marked " A " on this Plan (Exh. D/1 of Plaintiff). Part B on Plan (Exh. P/1) is in Block 67.

No. 3 (a).
Joseph Hazboun,
14th February 1938.
Examination.
Cross-examination.

Xxn. I have Block 67 plan here. This is it (Exh. P/2). The portion marked " B " (Exh. P/1) corresponds to Parcels 86, 87, 88, 89 and 90 in Block 67.

40 *Re-xd.* Portion " B " (Exh. P/1) is divided into several parcels because there are five different occupiers.

Re-examination.

To Court : Each of these parcels—86 to 90—has a different registered owner.

(Sgd.) B. V. SHAW, R/P.

*In the
District
Court of
Haifa.*

*Defendant's
Evidence.*

NOTE.—Mr. Habayib, who has been summoned and who is a Christian, is not present.

Ra'if Eff. Afghany, and Yahya Eff. el Yahya, are also absent although served. Land Registrar, Haifa—not served.

ORDER :—Adjourned to a date to be fixed by the Registrar—as early as possible. Fresh summonses to issue on the witnesses who have not appeared. At the next hearing we will deal with the 1st issue only. Dr. Weinshall to serve list of witnesses whom he proposes to call on the 1st issue.

(Sgd.) AARON SHEMS. 14.2.38. (Sgd.) B. V. SHAW, R/P. 10

5.4.38. Court as before.

For Plaintiff—Dr. Weinshall.

For Defendant—Mr. Asfour.

No. 3 (b).
Husni
Jarrah,
5th April
1938.
Examina-
tion.

D.W.2. HUSNI JARRAH. Sworn.

I am Assistant Land Registrar in Haifa. I have file No. 1521/33 here. This is the file of transfer of certain shares by sale from Malakeh Khoury Touma to the Plaintiffs. The vendor has to produce to the Land Registry (1) an application for sale, (2) a certificate from the Mukhtar, (3) his title deed, (4) certificate from the Werko Office. A kushan was produced. It is in the name of the vendor. On the left hand corner of this Kushan there is a note in pencil of the name of Hassan Omar el Zeideh and the figures 3/64. 20

To Court : I do not know whose handwriting this is. There is in this file a certificate of payment of taxes from the Werko Department. Certificate No. 92604. This certificate is in respect of Block 64, Parcel 13, Haifa. In this certificate, against the word vendor, there is written "Malakeh Khoury, registered in the name of Hassan Omar El Zeideh." This means that in the Werko Office this Block and Parcel is registered in the name of Hassan Omar El Zeideh. In the file there is also a certificate of the Mukhtar. This certificate is a declaration by the vendor certified 30 by the Mukhtar and two others. The vendor (Malakeh Khoury) declares that she is the person in possession (mutassarif) or owner of the land described in the Kushan to which the certificate refers. In the petition for sale the land is described as follows— $3\frac{1}{2}$ shares out of 24 and the number in the werko office is Block 64, Parcel 3. There is a deed of sale in this file. It is dated 28.9.33. According to this deed the parties appeared in person at Land Registry. This deed of sale is based on the documents produced by the parties.

I have file No. 459/20. This is a transaction of registration of unregistered property. I have in this file a certificate, dated 12.9.21, 40 from the Mukhtar of the Moslem Community of Haifa and others. This shows the name of Hassan Hassanain as being the western and part of the southern boundary of the land in respect of which registration is sought, and which is shown as being situated in Ashlul Khabieh locality. I do not know that locality.

I have file 261/21 here. This is also another transaction of registration of unregistered property. The date of the petition to register is

10.3.21. The western boundary is shown as Hassan Zeideh. There is a certificate of the Mukhtar. I cannot read the date. It mentions Hassan Zeideh as the northern boundary. There is another certificate signed by the Mukhtar and neighbours, and is dated 23.1.22. The boundary is not mentioned in this document. This is a certificate of qadd and tassaruf. There is a report dated 11.3.21 signed by the Registrar of Lands, a Government representative and the Inspector Land Department. This is a report re the same land. It gives the northern boundary as Hassan Zeideh and Yousef Kurdi. This report is endorsed by Dr. Doukhan, who was the Assistant Director of Lands. His endorsement reads "Grant title."

*In the
District
Court of
Haifa.*

*Defendant's
Evidence.*

No. 3 (b).
Husni
Jarrah,
5th April
1938,
Examina-
tion,
continued.

I have a report by the Surveyor and also a plan by the surveyor. The report and the plan both show Hassan Zeideh and Yusef Kurdi as the northern boundary.

I have file No. 456/20 here. This is a transaction of registration of unregistered land. There is in it a certificate dated 2.1.20. In this certificate Hassan Zeideh is shown as the western boundary. This land is situated in Ashlul Khabieh locality, in Haifa. In this file there is a petition by the person who was applying for registration, named Yusef Abdalla. It refers to the same land as is referred to in the certificate, and it shows Hussein Zeideh as the western boundary. Folio 4 in this file is a plan by the Land Registry surveyor of the same land. The western boundary is Hassan Zeideh.

There is no examination sheet in the file. There is a surveyor's report dated 9.9.21. It gives the western boundary as Hassan Zeideh. Registration of this land was approved.

I have file 573/23 here. This is an application by Hassan Umar El Zeideh to register a piece of land situated in the Ballan locality. The surveyor's report shows that this land is called Ashloul El Khabi. There is a letter dated 2.9.23 from the Director of Lands to the Registrar of Lands, Haifa, and marked "urgent." The subject is "Hassan Ibn Omar El Zeideh." The Director refers in the letter to an attached telegram from Malakeh Angeline and Elias Khoury. I do not know where the telegram is. In this file there is a certificate, dated 2.6.24, from several persons. It refers to certain constructions and wooden barracks on this piece of land (giving the boundaries) since 1½ to 2 years. There is in the file a report, dated 24.7.24, addressed by the Agricultural Assistant to the Land Court, Haifa. This was the Agricultural Assistant of the Government, it appears. This refers to trees on a certain plot of land. It refers to the inspection of trees of Khabieh land. It mentioned that some of the trees are 14 years old. In the end the registration was not completed.

Xcn. : File 1521/33—A Turkish kushan was produced by the vendor. This kushan was checked as usual. It was compared with the Register. If there had been any entry in the Register showing an encumbrance the transactions would not have been allowed. It was found that the vendor was still the registered owner. The Mukhtar's certificate was in the usual form—a printed form. Mukhtar and two notables signed it, and also the vendor. The Land Registry is interested to know in whose

Cross-
examina-
tion.

*In the
District
Court of
Haifa.*

*Defendant's
Evidence.*

No. 3 (b).
Husni
Jarrah,
5th April
1938,
Cross-
examina-
tion,
continued.

name the land is recorded in the Werko. If the land were registered in the name of a person not the vendor he would be sent for and an enquiry would be made as to why it was in his name. If the person in whose name the land is registered in the Werko were to dispute the ownership I would refer the matter to the Director of Lands. I do not remember any instance in which the Director stopped such a transaction owing to the objection. I do not remember ever making such a reference to the Director. This particular transaction was passed by the Land Registrar, and the purchase went through, and the Plaintiffs were duly registered as the purchasers. The sale was effected on 28.9.33. 10

File 573/23—the application was refused.

(Mr. ASFOUR admits that the application was refused because the land was claimed to be registered in the names of others, including the Plaintiff's predecessors in title.—B.V.S.)

In this file there is a copy of a document certified by the Notary Public. This document purports to be a petition addressed to the Magistrate of Haifa by George Farasli on behalf of Elias Khoury Touma, and his wife Nazira. It bears a statement signed by Hassan Omar El Zeideh in the presence of the Inspector of Police, Haifa, to the effect that— 20

“ I the undersigned Hussein Omar El Zeideh as from the day hereof and upon the orders that I have received from the Police Department, I am not entitled to encroach upon the land situated in the Ballan direction. If I do encroach on the said land I am willing to accept any punishment.”

This is dated 8.3.22, and there is a note that Hussein put his thumbprint on it. This is a certified copy of this document (Exh. P/3). I cannot say whether there was any land ever registered in the name of the Defendant. I cannot say whether the lands which are mentioned in Files 459/20, 453/20, 261/21, are adjacent to the land in File 1521/33 and File 573/23. At present, we verify whether the persons who are shown as neighbours are registered as holding lands in that locality. There is nothing in these files to show that the title of Hassan Zeideh to the adjacent land was checked. I have not got file 3765/35 here. I certified this (Exh. P/4) as being a true copy of a document in file 3765/35. 30

(Dr. WEINSHALL says that he reserves his right to call the Land Registrar to produce that file—3765/35.)

Re-examina-
tion.

*Re-*xd.** : There may have been other instances in which the Werko owner was different to the later owner. File 1521/33 did not go to Jerusalem. There is no authority for registration from the Director of Lands in this file. When in doubt I send a file to the Director of Lands. There is a departmental rule to this effect. The name of Hassan Omar El Zeideh is a familiar name to me in the office. 40

(Sgd.) B. V. SHAW.

Court adjourns for 20 minutes while Mr. Asfour goes to another Court.

Mr. Asfour calls :

D.W.3. RAIF EFF. AFGHANI. Sworn.

I am the Land Registrar of Acre. I have been in the Land Registry since 1920. I could not pass a transaction of sale without obtaining a certificate from the Werko Department. This procedure exists since Turkish times.

10 File 1521/33. The Werko certificate shows that the land is registered in the name of Hassan II Haj Omar El Zeideh while the kushan shows Malakeh Bint El Khoury Touma. There have been several cases in which such differences have existed. I would enquire why the land was differently registered in the Werko. I might look at the Werko records myself, or I might enquire of the applicant. If necessary I would send for the man in whose name the land is registered in the Werko. If that man does not claim the land I would take a declaration from him and keep it in the file, and proceed with the transaction. If the man claimed the land as his I would refer the file to the Director of Lands for instructions. The usual instructions of the Director are that the Werko claimant must produce a Court order if he wants to stop the transaction. The Werko claimant is given 10 to 15 days. The file would show the correspondence. 20 It would contain a copy of the notice served on the Werko claimant. If sent by post it would be sent registered, and if sent by messenger he would obtain a receipt from the Werko claimant. I have found nothing to show that any reference was made to the Werko owner. I was in Haifa from 1926-28, and then in 1932-6. The name of Hussain Omar Zeideh is known to me at the Land Registry.

To Court : I saw certain land transaction files concerning Hassan Zeideh.

30 *Xrn. :* I was in the Land Registry, Haifa, when this transaction was passed. This file has my handwriting on it. I made a preliminary examination of the file. The remark that the transaction was in order is made by Sami Eff. Deeb. He and I were both Assistant Land Registrars at that time. It was his function to pass the transaction after the approval of the Registrar. I see that the parties appeared before the Land Registrar (Musa Eff. Bahai), and he passed the transaction in person. It may be that file 573/23 was the only file in which Hassan Zeideh appeared as an applicant for registration. We have written instructions that when we have a doubt, we have to take instructions from the Director of Lands, or from one of the Land Officers. I do not remember any specific instructions that we must send the file to the Director if there is a discrepancy 40 between the Werko and Tabu owners. If the Land Registrar has no doubt about it there would be no reason to send the file. If I knew that an application by the Werko owner had previously been rejected I would not send the file to the Director. I was not told, in this instance, that a previous application had been rejected. If the Land Registrar knew of the previous rejection he ought to have made a note in the file. I cannot say whether he knew or not. When I examined the file the Werko certificate had not been produced. I did not see the file again.

Re-adv. : I remember that Mr. Muammar came to me in connection with a certain transaction. I went to the Land Court and examined a

*In the
District
Court of
Haifa.*

*Defendant's
Evidence.*

No. 3 (c).
Raif Eff.
Afghani,
5th April
1938.
Examina-
tion.

Cross-
examina-
tion.

Re-examin-
ation.

*In the
District
Court of
Haifa.*

*Defendant's
Evidence.*

*Judge's
Notes,
continued.*

file in the name of Hassan Omar Zeideh in 1936. Exhibit P.4 comes from L.R. file 3765/35. I don't remember seeing the Werko certificate on that file.

(Mr. ASFOUR wishes to recall this witness after File 3765/35 is produced.)

5.4.38.

(Sgd.) B. V. SHAW.

Mr. ASFOUR says that he does not wish to call his witness Yahia Eff. Yahia.

Mr. ASFOUR closes his evidence on the 1st issue.

Dr. WEINSHALL : I call no evidence on this issue.

10

Arguments on issue 1 :

Mr. ASFOUR : Evidence shows that there was no proper conveyance of title (to) the Plaintiffs. The kushan is entirely illegal because it purports to show a disposition of immovable property which has not received the sanction of the Director of Lands. Under Transfer of Lands Ordinance every disposition of immovable property must receive the consent of the Director of Lands : his personal consent. The Land Registrar does not figure in the Ordinance. When the law gives specific powers to a public officer he is not allowed to delegate in the absence of specific power given by law. In this case a delegation of power has not even been suggested. 20
The kushan must fail on this point alone.

Alternatively, I say that in order to get official acquiescence of a kushan the holder of the kushan must at least show a bona fide transaction. In this case there are doubts and suspicions which two experienced land registry officers say wanted the authority of the Director. It is a virtual rule of procedure in the Land Registry, written, that where there is any doubt the Director must be consulted. Why was the Director not consulted ? I say it was because the parties knew that if consulted they would not succeed. My client would at least have been notified if the Director had had the file. There is evidence that the Land Registry 30
demands a certificate from the Werko Department for two reasons :—

- (1) to verify who is the registered owner ;
- (2) to insure that taxes have been paid.

In this case there is evidence that the Defendant was the physical possessor of the land. This fact was made known to the Land Registrar before he allowed the transfer, and also to the parties concerned including the Plaintiffs. The certificate of the Mukhtar which de facto did not comply with Rule 3 of the Tabu Regulations, and de jure has become a nullity because it contradicted the contents (of) the Werko records. There was still more reason for consulting the Director. Without the certificate 40
under Rule 3 the transaction cannot proceed.

Finally—it has been established that Block 64 Parcel 3 is wrong. It is the land marked " A " on Ex. P.1. Therefore, whatever prima facie right Plaintiffs have it does not go beyond Parcel 3 Block 64. In the petition of sale in the Land Registry the land is described as Parcel 3 Block 64. The Plaintiffs claim land which is not covered by their kushan. They claim land in Blocks 64 and 67. The kushan refers only to Block 64, Parcel 3. Block 64 Parcel 3 is Portion A of the Plaintiffs' plan.

Adjourned till 7.4.38, at 9 a.m.

7.4.38. Court as before.
 Dr. Weinshall for Plaintiff.
 Mr. Asfour for Defendant.

*In the
 District
 Court of
 Haifa.*

Dr. WEINSHALL: 1st Issue—validity of the title. Prima facie I have adduced evidence of my title. No adverse title produced. No question of there being two conflicting titles. My predecessor in title had a valid title deed and she transferred it to me. Defendant argues that

Judge's
 Notes,
continued.

1. approval of Director of Lands was not obtained,
2. certificate of Mukhtar not in order,
- 10 3. Werko certificate shows that another person was paying Werko.

Question whether this Kushan covers the whole was not in issue.

1. In most of the cases the Land Registrar acts for the Director of Lands.

(Mr. Asfour objects that there is no evidence to this effect.)

Witnesses have stated that reference is made to Director only in case of doubt. Transfer of Land (Amendment) Ordinance (No. 2), 1921—see p. 882. Art. 2 of this Ordinance. This transaction took place in 1933—before the new laws of Palestine were published. Bentwich Edition—
 20 Vol. I, page 63.

Re (2). My client's predecessor in title lives in Beirut—is it suggested that a Mukhtar of Beirut should give a certificate? Vol. 3, p. 1820—Laws of Palestine and para. 4. These rules were in force in 1933.

Re discrepancy in the Werko (Point 3). Land Registrar not bound to refer the matter to the Director. He must satisfy himself that the party has a title. The internal regulations of the Tabu have no force of law. Legally the Land Registry cannot stop my transaction if I have a good title unless by order of the Court. In this case the Defendant applied for registration in 1923, and this application was rejected. Defendant
 30 did not take legal action to prove the registration. Defendant also declared that he would not encroach on this land any more. We claim the same title that our predecessor had—no better. At time of purchase my client did not know that the Defendant had an unfounded claim to the land. If Defendant had had to come to Court he would not have been in as good a position as now—in view of his reliance on prescription. I bought in accordance with the kushan—giving fixed boundaries.

Mr. ASFOUR: When I attacked the validity of the title of the Plaintiffs totally, I am entitled to attack it, by analogy, partially. Block 67 is not in my possession totally. There are five parcels in Block 67 and
 40 I am in possession of three only. This case refers only to Parcel 3 of Block 64. Consent of Government is obtained from the Director. Registrar of Lands not a statutory post. Mukhtar's certificate—land in dispute is in a Jewish and Moslem quarter in Haifa town—in Hadar Hacarmel. I have evidence to prove that the person who signed as a Mukhtar and the two so-called notables who signed belonged to the Greek Orthodox community of Haifa, and the Mukhtar was so appointed for the *Suk* quarter. The seller lived in Beirut and the purchaser in Egypt. There are Mukhtars in Hadar Hacarmel. The signature of the Mukhtar of the

*In the
District
Court of
Haifa.*

Judge's
Notes,
continued.

quarter where the land is situated is good, provided that he knows the seller and can certify that he is in possession. I raise the plea of fraud. They accepted a certificate of possession which was false to their knowledge.

Adjourned till 11.4.38 for decision on 1st issue.

(Sgd.) AARON SHEMS. 7.4.38. (Sgd.) B. V. SHAW.

11.4.38. Court as before.

For Plaintiffs : Dr. Weinshall.

For Defendants : Mr. Asfour.

DECISION OF FIRST ISSUE.

We are required to give a decision on the 1st issue, which reads as follows :—

“ Had the Plaintiffs a good legal title to the land ? ”

Four points have been raised by Mr. Asfour and we will deal with them separately.

The first submission is that the kushan is a nullity because the consent of the Director of Lands was not obtained as required by Section 4 of the Land Transfer Ordinance (Cap. 81). It appears from the extract from the Register of Deeds that the transaction was registered on 28.9.33, that is to say before the Revised Edition of the Laws came into operation. The law which applied at the date of registration was the Transfer of Land Ordinance 1920 as amended by the Transfer of Land Amendment Ordinance No. 2 of 1921. Art. 2 of the Amending Ordinance provided that “ the consent of the Administration to a disposition shall be given by the Director of Land Registries or the Registrar of the District or Sub-District who shall be satisfied only that the transferor has a good title . . . ” There can be no doubt that the Registrar of the District or Sub-District refers to the Land Registrar and no other Registrar, and the present transaction had the consent of the Land Registrar, Haifa. We find that the disposition was properly consented to, and Mr. Asfour's objection fails. 20

The second submission is that it was known to the Land Registrar of Haifa that in the Werko office Block 64 Parcel 3, which forms a portion of the land in dispute, was registered in the name of the Defendant, and that it was the duty of the Land Registrar to enquire into the matter, and in case of doubt to refer it to the Director of Lands who would have given the Defendant an opportunity to stop the transfer by obtaining an order from the competent Court. Payment of Werko does not prove that the person paying has a good title to the land, and we are unable to find that any failure by the Land Registrar to enquire into the matter or to refer it to the Director affects the validity of the transfer. We find that the second submission fails. 40

The third submission is that the provisions of the Law as to the granting of Title Deeds for State Land, dated 14.12.1858 (see page 129 of Tute's Ottoman Land Law) were not complied with, inasmuch as the transferor did not produce a certificate from the Mukhtar of his village or quarter. In the Land Transfer Ordinance itself nothing is said about Mukhtar's certificates, and we consider that the provisions of the law dated 14.12.1858 as to such certificates were impliedly repealed by the

Land Transfer Ordinance, particularly by Section 4. The law now in force in regard to certificates is set out in Rule 4 of the Land Transfer Rules (at page 1820, Vol. 3 of the Laws of Palestine), as amended by the Land Transfer Amendment Rules 1937 (at page 157, Supp. 2 of the Palestine Gazette of 1937). It is clear that the Director of Lands now has an absolute discretion to waive the demand for a certificate. Nor do we think that a breach of the rule regarding certificates would invalidate the transaction. There is no provision of law that failure to obtain a certificate from the proper Mukhtar renders the disposition null and void. It should be remarked, although we do not base our decision on this fact, that there is no evidence before us that the Mukhtar who gave the certificate in this instance had no authority to give it.

We find that this objection fails.

The fourth and last submission is that the kushan produced by the Plaintiffs does not cover the land which they are claiming. A decision on the first issue does not involve at present a finding on this point. The onus of proof in respect of the first issue was placed upon the Defendant because he was seeking to upset a prima facie valid kushan. The onus of proving that the kushan covers the land (if this is denied by the Defendant) will be upon the Plaintiffs. We record no finding upon this submission at present.

The result is that we find for the Plaintiffs upon the first issue, subject to their establishing that the kushan on which they rely includes the land which they are claiming.

(Sgd.) A. A. SHEMS. 11.4.38. (Sgd.) B. V. SHAW, R/P.

The following issue is added :—

3. Does the Plaintiff's Kushan include the land claimed by him in this case.

The Plaintiff to file his list of witnesses within seven days. Defendant to file his list of witnesses within three days of receipt of the Plaintiff's list.

Further date to be fixed by Registrar.

(Sgd.) AARON SHEMS. 11.4.38. (Sgd.) B. V. SHAW, R/P.

Hearing fixed for Monday, 9th May, 1938. Both parties to be notified.

20.4.38.

(Sgd.) J. I. HABIBY,

Registrar.

Haifa, 15th March, 1940.

Before : Judges EDWARDS (P.) and ATALLA.

40 Dr. Weinshall for Plaintiffs.

Mr. J. Asfour for Defendant.

Dr. WEINSHALL : Plaintiffs claim 14 out of 96 shares in a plot of land in Ballan locality. Official Registration in Land Registry 28.9.33. Plan submitted. Defendants admitted that Portion A is covered by our registration but B is outside our boundaries. Re claim itself their defence

*In the
District
Court of
Haifa.*

Judge's
Notes,
continued.

*In the
District
Court of
Haifa.*

Judge's
Notes,
continued.

is prescription. Defendant must prove prescription and for me to produce rebutting evidence. I'll call evidence on the first question re boundaries of lands.

Mr. ASFOUR : I suggest Court appoint some one under Rule 221. I suggest the Chief Clerk.

Dr. WEINSHALL : No objection if it is done quickly.

ORDER : Under Rule 221 we appoint Mr. Saleh Hakim, Chief Clerk of this Court, to enquire into the following matter viz. whether the Plot B as shown on the map produced by Plaintiffs is covered by the Plaintiffs' "Kushan" and for that purpose, to 10
hear evidence, documentary and oral on the spot, to examine the place in the presence of parties' advocates and to report to this Court. Parties' advocates agree to pay any reasonable remuneration and expenses that the Court may sanction. Report to be filed within three weeks. Case to be listed thereafter by the Registrar, on application by Dr. Weinshall.

(Sgd.) A. A. ATALLA. 15.3.40. (Sgd.) D. EDWARDS.

29th May, 1940. Court as before.

Mr. Ganon (for Dr. Weinshall) for Plaintiffs.

Mr. Muammar (for Mr. Asfour) for Defendant. 20

Mr. GANON : Report of S. A. Hakim of 5.5.40. We now apply for Commission to take evidence. See Notice of Motion of 17th May, 1940, for four named witnesses—three in Beirut and one in Damascus. This application was once filed in 1938 ; but never dealt with by the Court. Affidavit of Malakeh Touma sworn on 31.8.33—Rules 275 and 276. As the other side do not agree, I must get Malakeh Touma's evidence taken on commission. Malakeh is predecessor in title of Plaintiff. Sec. 15 Evidence on Commission. Laws of Palestine, Cap. 54, Vol. I, page 673.

Mr. MUAMMAR : Plaintiffs brought this action. Admitted mala fide. Malakeh is the most important witness. She sold the land under 30
dispute. Plaintiffs also bought the land under dispute and also brought an action in Court. What are reasons for applying for evidence on commission ? Is she sick ? Can she travel ? Sec. 15 Evidence Ordinance—" where it appears necessary for purposes of justice." The Court is not bound to grant the application because a person is outside the jurisdiction. Defendant is poor and cannot afford either to send an advocate to Beirut or employ one there. The way of examination and cross-examination in Beirut is different from that in Palestine.

Mr. GANON : replies—I agree Malakeh Touma is the most important witness of the four. She is over 60 years old. Difficult now to get a visa 40
from Beirut. We have asked her to come here ; she refuses. We have no power to bring her here. She is not interested in the case and is not interested in coming to Palestine. Unjust to deprive Plaintiff of getting the evidence of this witness. Defendant is not poor. He is a notorious litigant.

RULING : It is desirable that, whenever possible, the Court of Trial should see and hear the witnesses. It is admitted by both

sides that Malakeh Touma is an important witness. It is not alleged that she is ill ; she is only about 60 years old. Travelling from Beirut to Haifa is not by any means impossible even these days. People are travelling every day from Beirut to Haifa. We are not satisfied that it is impossible for Plaintiff to procure the attendance here of Malakeh Touma or the other three persons mentioned in the application of 17th May, 1940, which application we refuse to grant.

*In the
District
Court of
Haifa.*

Judge's
Notes,
continued.

Adjourn the hearing to a date to be fixed by the Registrar.

10 (Sgd.) A. A. ATALLA. 29.5.40. (Sgd.) D. EDWARDS, Pr.

20.12.40. Resumed. Court as before.

Mr. Ganon for Plaintiff.

Mr. Shapiro (G.) for Defendant.

Mr. GANON : Difficulty in getting a visa for Malakeh Touma (a lady) to come from Beirut. I produce a telegram from Beirut of 17.11.40. It is hoped that at the next hearing it will be possible to procure her attendance.

Mr. SHAPIRO : No objection to an adjournment.

ORDER : By consent, adjourn to a date to be fixed by the Registrar.

20 (Sgd.) A. A. ATALLA. 20.12.40. (Sgd.) D. EDWARDS.

25.4.41. Court as before.

Dr. Weinshall for Plaintiff.

Mr. Shapiro for Defendant (Mr. Muammar with him).

Dr. WEINSHALL : I've done my best to get Malakeh Touma here and got a visa from Government of Palestine. I expected her here to-day. She has not come. I have no means of compelling her. She is outside the jurisdiction of the Courts of Palestine. She is not my client. I tendered her LP.10 through my correspondent in the Lebanon. But I do not ask for any adjournment now. On 3.1.38 two issues were fixed. Onus on
30 Defendant in both issues. Interlocutory Order was made on 11.4.38—disposing of issue No. 1 in favour of Plaintiffs. Then a third issue was added on the same day. Mr. Hakim's report has been submitted. (Mr. Hakim was appointed by the Court as a referee re issue No. 3.) There was no objection to Mr. Hakim's report—no request for him to be called as a witness. So I close my case on Issue No. 3. It is not for me to prove possession as I hold a Title Deed. See Civil Appeal 92/39. Mr. Appelbom's Supreme Court Judgments 1939 Vol. 2 page 442 and Civil Appeal 85/39, Vol. 2, p. 438. The sole issue now is prescription. The burden is on
40 Defendant. It is for Defendant to lead evidence and I reserve my right to call rebutting evidence if necessary.

Mr. SHAPIRO : Ordinarily the onus of prescription would be on me ; but the Plaintiff himself shifted the onus to himself in asking this Court to enable him to take evidence on commission. Dr. Weinshall has not done all he could to get Malakeh Touma to come here. She wanted

*In the
District
Court of
Haifa.*

Judge's
Notes,
continued.

LP.10 ; he got to know that only on 23.4.41. Dilatoriness in getting her here. Dr. Weinshall has to go on with his evidence now. If Court holds that the onus probandi is on me, I am prepared to go on, but we all understood that we are here to-day for the hearing of evidence of Plaintiff's witnesses. My witnesses have not been summoned for to-day although I paid fees etc. in 1938.

Dr. WEINSHALL—replies—I've always denied the possession of Defendant.

The Court puts to Dr. Weinshall the fact that he is the " party having the right to begin " (see Rules 188 and 189). The Court asks Dr. Weinshall 10 whether he now closes his case and is prepared to run the risk of our refusing, in our discretion, to allow him later on to call rebutting evidence (see line 5 of Rule 189 (2)).

Dr. WEINSHALL—replies that he is prepared to call his witnesses now (see line 2 of Rule 189 (1)).

*Plaintiff's
Evidence.*

No. 3 (d).
Labib
Hawa,
25th April
1941.
Examina-
tion.

W.P. LABIB HAWA. Sworn.

Clerk, Execution Office, Haifa. I produce a true copy of Report of Dispossession of 31.5.24. Hassan Zeideh has been dispossessed of the land known in the Schedule of the Tabu No. 5 Vol. 59—area of 12 old dunams—dispossessed by an officer whose signature I cannot decipher. 20 Exh. L.H.1. This is the true copy. The land was delivered to the attorney of Judgment Creditor, Dr. Weinshall. Exh. L.H.2. This is a true copy of another order of dispossession of 8.4.29. Report of delivery of land in Ballan, near Hadar Hacarmel Colony, Haifa. The boundaries are given in the Schedule of the Tabu No. 5 Vol. 59 Folio 88. The delivery was against Elias Inkiry and Hassan Zeideh.

Cross-
examina-
tion.

Xrd. : Exh. L.H.1 is in File No. 4199/28 Execution. The judgment creditor in that file was Nadira Cook of Beirut. It was a judgment of Magistrate's Court of Haifa in its criminal capacity : order of delivery of possession to complainant, Nadira, to warn Ali Hassan and Elias to raise 30 their hands from the land and not to object to complainant and to deliver possession to her.

Question : Is there in this file an order of High Court staying execution ?

Answer : Yes. High Court 12/30 of 28.2.30. On 13.3.30 Mr. Faud Atalla came and said that the High Court had ordered a stay but that the Land Court's judgment had been confirmed by the Court of Appeal.

(The Court allows Mr. Shapiro to postpone further cross-examination of this witness till a later date, as Mr. Shapiro requires time to study the file and to produce the necessary certified copies.) 40

No. 3 (e).
Saleh Eff.
Hakim,
25th April
1941.
Examina-
tion.

W.P. SALEH EFF. HAKIM. Sworn.

Chief Clerk, District Court, Haifa. I produce Criminal Appeal file 27/30—appeal from a judgment of Magistrate's Court, Haifa. Appellant, Hassan Omar El Zeideh. This is a true copy of Notice of Appeal filed on behalf of Hassan. This is it—Exh. S.H.1. Exh. S.H.2—This is a true copy of judgment on appeal. The conviction was confirmed but sentence varied to a fine of LP.5 and in default of payment one month's imprisonment.

No Xxn.

W.P. FAIK HALAZOUN. Sworn.

Chief Clerk, Magistrate's Court, Haifa. Process Server Mansour Elias has searched for the file Crime 698/30, and cannot find it. I instructed him to search for it. I produce the Register of Criminal Cases for 1930. Criminal Case 698/30 was registered on 29.5.30. Prosecutor: Nazira bint Michael Cook of Beirut. Accused: Hassan Omar Zeideh, Haifa. Charge: Addendum of Art. 130 Ottoman Penal Code. Judgment: one month's imprisonment and 400 mils fees: in presence. This case was appealed: Judgment confirmed but sentence LP.5 or one month in default of payment. This was on 3.10.30. Exh. F.H.1—This is a true copy of the entry in the Register, certified by me. We do not keep a Book containing judgments in criminal cases. The files in the cases are destroyed—in practice they should be destroyed (Archives Rules), but in practice they are not because we have not had time.

In the District Court of Haifa.

Plaintiff's Evidence.

No. 3 (f).
Faik Halazoun,
25th April 1941.
Examination.

Xad.: I've been Chief Clerk, Magistrate's Court, Haifa, since 12.2.40. I did not make the entry in 1930. No one can see the Register without permission: not in my time. In 1937 the Magistrate started to sign the Register. The register is not initialled by the Magistrate: but it is certified by the Clerk; nor by Colonial Auditor.

Cross-examination.

20 *Re-ex.*: There are no traces of tampering with this entry, as far as I can see.

Re-examination.

W.P. NICOLA HAWA. Sworn.

Formerly clerk, District Court, Haifa. Now on pension. In 1930 I was a clerk in District Court, Haifa. (Shown Register of Criminal Cases, Magistrate's Court.) At page 90—Date of entry 31.5.30. My signature is there; I signed as receiving the file in Magistrate's Case 698/30, Criminal. Before signing for the file, I checked the name of Appellant and Respondent and then signed.

No. 3 (g).
Nicola Hawa,
25th April 1941.
Examination.

30 *Xad.*: Files are registered here in this book—I don't know when the cases are registered in this book as soon as the case is opened. When I signed for the file, I did not check the judgment in the file with the judgment in the Register.

Cross-examination.

Re-ex.: After I received the file, I registered it in my register and I read the judgment then. A resumé of the judgment of the Magistrate was recorded in the District Court Register.

Re-examination.

W.P. ELIAS MANSOUR. Sworn.

40 Process Server, Magistrate's Court, Haifa. The Chief Clerk told me to search for file in Criminal 698/30. I searched for it. The criminal files are kept in a cupboard in the corridor of the Court. I made a diligent and thorough search. I did not find the file—but I found the files before and after File No. 698.

No. 3 (h).
E'ias Mansour,
25th April 1941.
Examination.

Xad.: A clerk, Artin, helped me and a process server, Mustafa, helped me to search. I looked also in another place and I found a file with a number approaching this number but not this. First Mustafa searched but did not find; then Artin helped with a light; we got the files from the Pigeon Holes, but we did not find the file in question.

Cross-examination.

*In the
District
Court of
Haifa.*

*Plaintiff's
Evidence.*

No. 3 (i).
George
Farazli,
25th April
1941.
Examina-
tion.

W.P. GEORGE FARAZLI. Sworn.

I gave evidence before the Referee, Mr. Hakim, re the land in dispute. I know the land in dispute. I've known it since before 1914. It is the same land as that in which Nazira Cook has her share. She has no other land. She is living at Beirut. I know Malakeh Touma. She is the sister-in-law of Nazira Cook. Nazira Cook's husband is a brother of Malakeh Touma. Malakeh Touma is living permanently in Beirut. She is a resident of Beirut. She never lived in Palestine. I never saw her in Palestine. I don't know the Alexanders personally. There was a trespass on the land and case was brought. Hassan Zeideh was the trespasser alone. 10
The encroachment took place first in 1918 or 1919. During the 1914-1918 war I was absent from Haifa—I went to Trans-Jordan in 1916, and returned back in 1919. I used to inspect the land from time to time before 1916 because the owner in Beirut asked me to visit. The "owner" is Elias Khoury Touma, the husband of Nazira. Before I left in 1916 the condition of the land was uncultivated—no trees—no buildings: no fence: no one was doing work on the land. I first noticed construction on the land at the beginning of 1919. The construction I found was—I found that Hassan Zeideh had built a hut and also loose stone walls. I wrote to Beirut to the owners and they came here. The "owners" were Elias 20
Khoury Touma and his wife Nazira Cook. Malakeh did not come. When he came here he raised an action in Magistrate's Court and got judgment. I used to accompany him to the Court. He took my advice. In 1924 the judgment was executed. I mean that he was evicted from the land. After they had taken the judgment in 1921 they gave me a power of attorney and left for Beirut. I was acting for them in execution of that judgment. After Hassan Zeideh was evicted from the land a case was raised before the Land Court by Hassan Zeideh; Hassan Zeideh returned to the land, after execution of the Magistrate's Courts judgment. In 1928 30
there was another eviction. He returned again. The owner of the land came here and followed up the matter.

Cross-
examina-
tion,

Xcd. : I am 73 years old. I was a cultivator. I was born in Beirut. I first came to Haifa in 1898 and remained here. I was the agent of Tweine in managing his properties. I continued his agent till 1912. From 1912 onwards my residence has been in Haifa. After I left Tweine, I did agricultural work in Beisan, I started again work in 1910 in Beisan. My residence (permanent) was in Haifa but I used to go and visit Beisan. I knew Elias Khoury Touma before I came to Palestine. I knew his wife N. Cook, and his sister Malakeh before I came to Palestine. Since 1913 40
I was asked by him to visit his lands. I visited the land in 1913. In 1913 I visited it once and then two or three times in 1914. I visited it in 1915 once. There were no trees in 1913-1914 or 1915 on the land. I was present in Land Court, Haifa, during the hearing of case between Nazira Cook and Hassan Zeideh.

Question : Did you hear the Agricultural Officer swear that trees had been there for 15 years ?

Answer : I don't remember. I was the agent but I appointed an advocate I was representing Nazira Cook in the Land Case between her and Hassan Zeideh. I did not give evidence; but I appointed an advocate in the matter. I did not attend all the hearings. 50

Question : Between 1918 and 1921 did Elias Khoury Touma or his wife come to Haifa ?

Answer : They did not come. Had they come I might have known. The first time he wrote to me was in 1913. I used to visit Beirut between 1898 and 1913. I did not see Elias Khoury Touma in Beirut nor did I see Malakeh. Between 1898 and 1913 Malakeh did not, to my knowledge, come to Palestine. I was present when Elias Khoury Touma bought the land. I knew Malakeh before 1898. I don't know whether she was married then. I saw her in Beirut. I don't remember in whose house. 10 I last saw her I don't remember when. I have not seen her since before the 1914 war started. After 1914 I did not see her. She is of middle height. After 1921 I did not see Elias Khoury Touma in Beirut because he died in 1922. I saw his wife in Beirut after her husband's death. When I saw Nazira in Beirut I did not see Malakeh because I am Nazira's agent and have nothing to do with Malakeh. I don't remember whether saw Malakeh after I left Beirut for Palestine in 1898. But I know she has been living in Beirut. She was always living in Beirut because she was born there and was there all the time. Before we came to Haifa we knew that she is living in Beirut and their house is in Beirut. She is 20 married now. I know her husband. His name is, I think Bishara Saleeb. I've not visited his house. I used to meet him some times. I did not speak to him about the land. Most of my time when I was in Beisan and so I can't tell whether she came to Haifa or not. I'm not related to Malakeh. I last visited the land of Hassan Zeideh in 1928, after execution for the second time. Since then I've not visited the land. I went there to give evidence before Saleh Eff. Hakim, but I did not inspect the land. I did not visit the whole land when I gave evidence before Hakim.

Question : Were you not the holder of a power of attorney from Nazira Cook ?

30 *Answer :* Yes : I had it since 1921. My knowledge re the eviction in 1928 was got from others. The husband of the sister of N. Cook came with a power of attorney from her and therefore I took no further interest. When I gave evidence before Mr. Hakim, all I know is that I was taken to show the boundaries. I showed them and came back. I don't think Hassan Zeideh could have been in possession since 1916. I was not in Haifa between 1916 and 1919. I don't know who was in possession between 1916 and 1919. I found a hut and various small trees in 1919. Near the hut there was a fence. I found the hut and trees and fence when I came in 1919 (recently planted trees). After Hassan Zeideh's eviction in 1924 40 he was off the land. I don't know how long. The advocate was in charge of the Execution file. He had the papers and dealt with the matter legally. I went out with the Execution Officer when he was evicted in 1924. I was not served with a High Court Case in 1924. The advocate was in charge of the case. Between 1924 and 1928 I visited the land once or twice. There were no barracks on the land. Between 1921 and 1924 I visited the land : the barracks were erected after 1929. After 1928 when his brother-in-law arrived I did not go to the land any more. It is hearsay what I say that the barracks were constructed after 1929. In 1921, 1922 and 1923 I don't think it was difficult to travel to Beirut. 50 I travelled by sea. When there were cars I travelled by cars. In 1923

*In the
District
Court of
Haifa.*

*Plaintiff's
Evidence.*

No. 3 (i).
George
Farazli,
25th April
1941,
Cross-
examina-
tion,
continued.

*In the
District
Court of
Haifa.*

Hassan Zeideh started a transaction in the Land Registry of Haifa and we stopped him. When I stopped him in virtue of my power of attorney from Nazira he raised the action in the Land Court.

*Plaintiffs'
Evidence.*

Re-xn. : I know that in 1919 when I saw the trees, they were one or two years old, I think. I was on a small side of the land, I think, to the south, near the hut. I have experience in tree plantation. It is possible to transplant a tree 6 or 7 years old on to other land.

No. 3 (i).
George
Farazli,
25th April
1941,
Re-examina-
tion.

W.P. SAYDEYA BEN ABRAHAM PAZ. Sworn.

No. 3 (j).
Saydeya
Ben
Abraham
Paz,
25th April
1941.
Examina-
tion.

Employed by Palestine Land Development Company. I gave evidence before Mr. Hakim in connection with this case. I know the 10
land in dispute. My Company owns land in the vicinity—all the land to S. of land in dispute belongs to my Company. My Company had no interest in the land in dispute. I used to visit Haifa between 1914 and 1918—up to the end of 1917. In 1918 I was not in Haifa. I came back in 1919. When I used to visit the land of our company I would naturally visit the adjacent land. I visited it between 1914 and 1917. The condition of the land then was empty and rocky. I saw the land like that up to about the end of 1920. When I came back in 1919 from Constantinople I saw certain people making fences in April, 1919. I did not notice trees there. I came back from Constantinople in the first months of 1919. 20
I think I started to visit the land in April, 1919. I did not see people planting trees there at any time. I think a year after I saw a hut. I know Hassan Zeideh. I first saw him on this land, I think, in 1920.

Cross-
examina-
tion.

Xn. : I visited the land about once a month or so, once every 1½ or two months between 1912 and 1917. I had no special interest in the land in dispute but I used to visit our boundaries. I did not see it was open land. It can be seen from our boundaries. I did not know Hassan Zeideh before 1920.

Question : Hassan Zeideh cultivated the land and lived on it long before 1912 and ever since 1912 ? 30

Answer : I say that this is not true. It is not true that I or my Company have an interest in this land. In 1920 or 1921 Mr. Shapiro's client sent a man to Mr. Chankin offering to sell him the land for 50 mils a pic and Mr. Chankin told him that he knew that this land had owners. This was in the office : the man asked me to introduce him to Mr. Chankin. Now 1.15 p.m.

Judge's
Notes,
continued.

ORDER : Adjourn for further evidence for Plaintiff to a date to be fixed by the Registrar.

25.4.41

(Sgd.) D. EDWARDS.

Hearing adjourned to 23rd May, 1941, at 9 a.m. Messrs. Weinshall 40
and Shapiro and Muammar notified.

25.4.41

(Sgd.) J. I. HABIBY, Registrar.

Hearing adjourned to 4.7.41 at 9 a.m.—both notified.

23.5.41

S. A. H.

5th July, 1941. Court and Bar as before.

WEINSHALL : Malakeh Touma is living in Beirut and, of course, owing to hostilities, it is impossible for her to come here. I ask for a further adjournment. I understand that the Defence witnesses are not here to-day ; so the case will have to be adjourned in any event.

Magistrate, Haifa's Criminal Case No. 270/21. I produce an attested copy and wish to file it.

SHAPIRO : I object to a production of the judgment in Criminal Case 270/21.

10 WEINSHALL : replies : Land Appeal 29/29 Palestine L.R. Vol. I, p. 422.

RULING : We do not consider that the certified extract judgment of the Magistrate Court in the Criminal Case is inadmissible. We allow it to go in subject to further argument at a later stage, as to its relevancy or otherwise.

ATALLAH. EDWARDS.

4.7.41.

SHAPIRO : I think it is a bona fide application for adjournment.

20 ORDER : Adjourn to a date not earlier than 15.10.41 to be fixed by the Registrar. There will be no need for Defendant to bring his witnesses to the next hearing.

ATALLAH. EDWARDS.

4.7.41.

Hearing adjourned to 17.10.41, Mr. Mu'ammam notified, Mr. Weinshall to be notified.

4.7.41.

HABIBY,
Registrar.

IN THE DISTRICT COURT OF HAIFA.

Sitting as a Land Court.

30 LAND CASE No. 22/35.

Before : Their Honours the R/PRESIDENT (Judge Weldon) and Judge A. ATALLA.

In the Case of :—

ROSE & EDMUND ALEXANDER Plaintiffs

V.

OMAR HASSAN ZEIDEH - - Defendant.

Hearing of—28th May, 1942.

Nature of Claim or Application : Application for leave to take the evidence of Malakeh Touma of Beirut on commission.

40 For Applicant : Weinshall.

For Respondent : Shapiro.

WEINSHALL : Have done everything to induce the lady in question to come and give evidence. After agreeing she now refuses. Prepared

*In the
District
Court of
Haifa.*

Judge's
Notes,
continued.

to pay costs of other side to brief advocate to cross-examine her if Court grants permission for evidence to be taken on commission.

SHAPIRO : Affidavit deposed to by Dr. Weinshall—contrary to proper practice. Long delay in submitting this new application. Position not changed since last ruling of Court on this matter two years ago.

WEINSHALL : Nothing to prevent advocate deposing to affidavit a fact in his knowledge. No undue delay ; endeavoured to get her all the Court vacation. She refused finally in October and early November I filed my application. Only question is it possible to get her to come—this we cannot do. No delay by letters as case not yet fixed and cannot 10 come off until after Court Vacation.

COURT : We do not see any fresh ground for altering the previous decision of this Court—given when differently constituted from the present. Application is dismissed with LP.2 costs awarded Respondent.

(Sgd.) A. A. ATALLA

(Sgd.) S. WELDON,

R/President.

Monday, 18th January, 1943. Notify Parties.

(Sgd.) K. SHEHADEH.

Hearing of Monday, 18th January, 1943.

20

Appearances as before.

*Plaintiffs'
Evidence.*

P.W. JOWDAD MURTADA QASSIMI. Sworn.

Advocate since 1930. Previously Civil Magistrate, was stationed in Haifa from 1920 onwards. I remember making an inspection in a criminal case. I cannot recollect any details but I have seen a certified copy of proceedings, and according to that record there was an inspection.

Xxn. : Saw no other Magistrate in Haifa in 1921. Had many inspections. Cannot recollect any without refreshing my memory. The document from which I refreshed my memory was not marked certified copy. Bore seal of District Court. 30

Such report in respect of Mikhael Touma. Witness summons in respect of Itzhaq Rosenberg returned unserved.

Hearing adjourned to date to be fixed and summons to be issued at early date and in adequate time before date of hearing.

(Sgd.) A. A. ATALLA.

(Sgd.) S. WELDON, R/President.

Hearing of Thursday, 11th March, 1943.

Appearances—For Plaintiff : Ganon

For Defendant : Muammar.

P.W. ITZHAQ PESACH ROSENBERG. Sworn.

Worked for Palestine Land Development Company from 1914 until 40 1918. Company then had lands in Haifa. Know Wolf Eisenberg. He

No. 3 (l).
Itzhaq
Pesach
Rosenberg,
11th March
1943.
Examina-
tion.

had land in Wadi Rushmiyeh. Know lands of Shabatai Levy and partners. During time of my work with P.L.D.C. boundaries were :—*On right* the land of Eisenberg—now separated by Herzl Street, Hadar. *On the Carmel side*, I think. *South*—land of Kassab. *On sea side* land of Mudawar and I think land of Wadi Rushmiyeh and I think other lands. Visited this land of Levy. I fenced it about 1917; I thought it was Government land and I saw people doing the same thing. Nothing on the land. No trees or signs of vegetation. That is all I did to this land. Rocky land. No buildings. About time I made the fence I learned it was not Government land, so I left it. I spent about £T.30-40 on fence. Fence of stone piled on one another.

Xxn.: Was Chief Clerk in Haifa of P.L.D.C. Cannot remember exactly shape of land I fenced. I fenced behind land of Mudawar. Labourers of P.L.D.C. worked on it. Jews. Could find none of them. Nobody approached me and told me it was their land. Asked nobody for cost of fence. Paid Turkish gold pounds. Did not work continuously. Spent about two weeks in all on it. Don't remember if summer or winter. Don't know one Hassan Zeideh. Did not visit the land after 1917. Was making roads in locality in 1918. Not in 1924. If I stood on land facing Acre Town Wadi Rushmiyeh would be in front of me.

By Court: Difficult to point out boundaries now as there are many buildings now in that part.

P.W. MUHAMMAD ABDUL RAZZAQ KHOURY. Sworn.

Clerk of District Court Haifa. Produce file of Land Case 9/24 P/5 between Hassan Omar Zeideh, Plaintiff and George Farazli, as attorney of Elias Khoury Touma and his wife Nazireh, defendants. Contains certified true copy of inspection report made in criminal case 270/1921 Magistrate's Court.

No Xxn.

30 Adjourned to date to be fixed by Registrar, in order to complete Plaintiff's evidence and hear defence (two days).

(Sgd.) S. WELDON,

R/President.

On 15th April, 1943, there appeared before me Mr. Ganon for Plaintiff and Mr. Friedman for Defendant and inform Court settlement in progress. Ask for adjournment. Adjourned to May 3rd, 1943, for mention.

(Sgd.) A. A. ATALLA. (Sgd.) S. WELDON, R/President.

40 On 3rd May, 1943, the parties appeared and applied for further adjournment to complete settlement; one party in Egypt and correspondence takes considerable time owing to censorship conditions.

ORDER: Case adjourned generally.

(Sgd.) A. A. ATALLA. (Sgd.) S. WELDON, R/President.

In the District Court of Haifa.

Plaintiffs' Evidence.

No. 3 (l).
Itzhaq
Pesach
Rosenberg,
11th March
1943,
Examination,
continued.
Cross-examination.

No. 3 (m).
Muhammad
Abdul
Razzaq
Khoury,
11th March
1943.
Examination.
Flag A.
Judge's
Notes,
continued.

*In the
District
Court of
Haifa.*

Hearing of 16.6.43.
Appearances as before.

Judge's
Notes,
continued.

WEINSHALL : Closes evidence for Plaintiff subject to right to call rebutting evidence if necessary.

Defendant's Advocate calls evidence :—

*Defendant's
Evidence.*

1 D.W. ABDO SHAHIN JABR. Sworn.

No. 3 (n).
Abdo
Shahin
Jabr,
16th June
1943.
Examina-
tion.

Know Hassan Zeideh also known as Hassan Hawareh and as Hassan Hassanein. I am originally of Nazareth. Came to Haifa in 1901 and have lived there ever since. Know Ardh el Biham. Passed over it on my way to a garden in Wadi Rishmiyeh. Since I came to Haifa I used to see Hassan Zeideh and his wife making a stone fence and planting fig trees and cultivating the ground. He planted onions, beans and peas. I bought land on one of the boundaries of his land. I think to the south—there is a Hujjeh Sharieh for my purchase. Bought it on 12 Mais 1332. This is the hijjeh now produced (D/11). It shows west boundary as land of Hassan Howary. It was during the last great war. Hassan Zeideh was then living there. I don't remember if in a house or land or what. The land I bought was known as "Eshloul al Khabrieh." I bought it from Aswad. I registered the sale in Tapou and got a deed. Later I sold it. That is the Land Registry extract of my registration, No. 148 (D/3). Registration was effected on the hijjeh. I think I sold it a year or two years later and then I no longer went there. I could point out the boundaries of Hassan Zeideh's land. Have never seen Hassen Zeideh on any other land except in that locality. On North of our land a second land of Fouad Saad and third owner. To West of Hassan Zeideh's land, other lands, I don't know to whom they belonged.

Cross-
examina-
tion.

Xcn. : Our garden was a long way from the land we bought as far as from here to Khamra Square : it is known as Neve Shaanan to-day. I heard later that Ardh al Bilan included all the lands from the hill and included my land. My vendor had no Tapou registration. Cannot say if Hassan Zeideh's land larger or smaller than mine. I never entered Hassan Zeideh's land at all. Never lived on my land or in that vicinity. When I bought my land in 1915 there were bearing fig trees on Hassan Zeideh's land. I saw olive and almond trees there. When I got registration in 1921 he had big trees on his land. I don't remember how many trees. Certainly more than 20, 30 or 50 trees. There was a stone dry wall round his land 1-1½ metres high, before the last war. Ever since we came to Haifa from Nazareth, I saw Hassan Zeideh working on these walls in 1901 and 1902 at the time he was planting this land. I had no business with Zeideh. He lived somewhere at the far end of his land from me—about 200 metres. He had a partner, Elias Inkairy. I saw him after the occupation working there with labourers he brought. Remember a Magistrate coming and inspecting this land and my land in connection with a case of people who claimed the land as theirs—people from Beyrouth. This was in 1921. I am sure there were trees then on Hassan Zeideh's land. I don't remember that I was a witness in a land case against Hassan Zeideh. I did not say in a Land Court that Hassan Zeideh had been there only 12 or 13 years before 1924. I don't remember saying Zeideh built after the occupation.

2 D.W. VICTOR BISHARA MUDAWWAR. Sworn.

In 1914 I was on the land of my father in Bilan locality to fence it. I found Hassan Zeideh and one Irhaweh had trespassed on our land to an extent of 40 metres in depth. He had put up a fence which I pulled down. I saw he encroached on land of my neighbours, Bayrouth people. Our land was to the North of the land occupied by Hassan Zeideh—he occupied more than 10 dunums bounded by Mudawwar to north; Dr. Dakheel to West, to the south a road or track, to east lands before Wadi Rushmiyeh. Went there first in 1914, July. There were small trees on that land. I did not see him plant. I saw him working there with Inkeiry. I saw them fencing. Went there 20 or 15 times while we were making our fence. Hassan Zeideh had a hut there. I do not know if he slept there. There were women and children there. When I went there I always saw Hassan Zeideh in that land. There were small fences on other side of his land. I left Palestine in 1914—November, and did not return until 1920. I saw Hassan Zeideh still in possession and more trees on the land. Three or four months ago I went with Nazireh Cook to the land that was in occupation of Hassan Zeideh since 1914. I went to point out the boundaries. Herzal Street now crosses this land. I did not see Zeideh there. Since the occupation until to-day I went to the land about 10 times. Saw Hassan Zeideh there in 1921. Saw huts erected there.

In the
District
Court of
Haifa.

Defendant's
Evidence.

No. 3 (o).
Victor
Bishara
Mudawwar,
16th June
1943.
Examina-
tion.

X.m. : I don't remember whether to south of our land there was a small track. If the Kushan says so there must have been. There were traces of low fences on the land there. This land was sold before 1914 to the Khatoon daughter of Jibrán Saad, wife of Elias. Mudawwar my uncle; her brother asked me to go out to the land. Don't know the length of my boundary on which Zeideh had trespassed—it was to the sea-side. Inkeiry was there and two or three labourers. I told them the land was that of Beyrouth people. Zeideh told me not to worry about other people's land. Know George Farazli. Know there was correspondence between him and the Beyrouth people. There were some small trees on that land in 1914. From 1920 until a few months ago I did not go especially to the land. I passed it on 10 or 15 occasions on other business. This land to-day belongs to Jews.

Cross-
examina-
tion-

Re-m. : From July-November 1914 I never saw the Beyrouth people on the land on which I saw Zeideh and Inkeiry.

Re-examina-
tion.

3 D.W. MIKHAIL MAJEED ABU FADHL. Sworn.

Know Defendant Hassan Zeideh. Have seen him working in locality known as Ardh el Bilan. First time was during the last War in 1916 or 1917. I don't know to whom the land belongs. He used to dig and planted fig trees. It was waste land. There were stone walls. Don't know if he lived there. I used to go there on Sundays and evening for a walk. Did not go there after 1916. It was sloping land. Went there with two Court representatives after the occupation.

No. 3 (p).
Mikhail
Majeed
Abu
Fadhl,
16th June
1943.
Examina-
tion.

X.m. : The land he worked on sloped towards the Wadi Rushmiyeh bridge. He worked in different places on the land. I don't know the name of the locality or the land or its boundaries. It is built over now

Cross-
examina-
tion.

*In the
District
Court of
Haifa.*

by part of Hadar Hacarmel. I could not say what building now covers the land. I used to talk to Zeideh—when I went there and sat with my family. He used to buy things for me. He was once my foreman.

*Defendant's
Evidence.*

4 D.W. ALI SALEH OTHMAN. Sworn.

*No. 3 (q).
Ali Saleh
Othman,
16th June
1943.
Examina-
tion.*

Bank messenger : 53 years old. Know Hassan Zeideh for 10 years, before the War of 1914 I used to work in Wadi Rushmiyeh quarries. I passed the Ard el Bilan on my way to work. I saw him fencing and planting in that land. I saw him doing this from 10 years before the great war until 12 years after the Occupation. Passed there daily morning and evening. His wife was with him. They planted vegetables. It was 10 where Herzl Street is now. The land has now roads to north and south, east and west. He is on the same land now. In 1916 there was a road on three sides of that land and wa'r land on the east. Saw fences there before the last war. I used to go and sit with him on the land regularly every year. I went there last three or four months ago.

*Cross-
examina-
tion.*

Xm. : He is a friend of mine. Up to the last war he used to live in our street. He built a stone house of three rooms before the last war and then went and lived there during the war. Know Ali Natour. A quarryman. The land was 10 or 12 dunams. The trees were 10 or 15 years old when the 1914 war started. All the land was planted. Very many trees over 20 all the land.

Adjourned to Tuesday, 20th July, 1943, and for continuation on 21st and 22nd July, Advocates notified.

(Sgd.) A. A. ATALLA. (Sgd.) S. WELDON, R/President.

Hearing of 23.7.43.

Appearances as before.

*No. 3 (r).
Hisni
Jarrah,
23rd July
1943.
Examina-
tion.*

5 D.W. HISNI JARRAH. Sworn.

Assistant Land Registrar, Haifa. Produce file of sale transaction 1521/33 by Malakeh Touma to Rose Andraus Touma and Edmund Elias Iskandar. The certificate now shown to me (D/4) is a certified copy of a 30 Mukhtar's certificate dated 26.9.33 in that file. This is a certified true copy of Werko certificate (D/5) dated 27.9.33 in that file. This is a certified copy (D/6) of mazbata produced in file 456/20 Land Registry Haifa. There is a land surveyor's report—Bansbuher in this file. I produce certified copy of mazbata dated 12.9.21 in file L.R. 459/20 (D/7). Mentioned in my previous evidence. I produce certified copy of mazbata dated 30/1921 (D/8) mentioned in my evidence on file 261/21. Lands the subject of files 456, 459 and 261 mentioned above were registered in name of applicant on strength of documents produced.

(WEINSHALL—Objects to production and admission of these 40 documents—D/4 to D/8.)

(MUAMMAR—I am producing formally through a person able to certify they are true copies. I will bring evidence as to their truth.)

COURT : We allow the production formally.

WITNESS *continues* : There were subsequent sales, partitions and mortgages of the land. I produce certified copy of mazbata dated 2.3.1922

from file 573/23 (D/9) mentioned in my previous evidence. Registration eventually refused by Director of Land.

Xen.: File 573/23—application—by Hassan Omar Zeideh for registration of unregistered property. Letter of Director Lands does not say why registration is to be withheld. In this file there is a koshan showing land held in part is three plots of land in name of Shabatai Levy and Ballan. Land $12\frac{1}{2}$ dunams and objector to registration is Hassan Omar Zeideh's name by letter dated 24.8.1923. No certificate of Werko payment by Zeideh in this file. No Werko certificate produced by Shabatai Levy.

10 6 D.W. IZCHAK KOMORNIK. Sworn.

Government Surveyor, work for Land Registry at Haifa. According to my investigation and tracing of the land in File No. 459/20 the land is now comprised in Urban Assessment Block Plan, Block 10864, parcels 124 and 5—parcel 5 subdivided in parcels 169 and 170. Block 10867 parcels 98, 179, 180. File 456/20 contains a plan—this corresponds to V.A. Block 10867 parcels 94–97 inclusive and lies to the East of parcel 92 and 93 shown in Exhibit R.VII. I reduced the original plan to the scale of Exhibit R.VII. This was reduced in plan. File 261/21 contains a plan. I also reduced this plan to scale R.VII and it corresponds to V.A. Block 10867 parcels 76–83 inclusive and lies to the south-west of land marked B and in red in R.VII. This is my reduction plan.

Xen.: Never seen a plan relating to file 459/24. I did not survey this land myself. From the file itself not possible to say to what Block and parcels it contains at that time, no such indication. Traced it from subsequent transactions in the Register—don't remember particulars of these transactions. Plan in file 261 is a sketch plan, no survey points or compass directions—no dimensions, only area and neighbouring land shown. It was located from the subsequent transactions in the Register. No survey points in plan in file 459. Only possible to locate the plots in these plans by indications given by the owner in connection with subsequent transactions.

7 D.W. ABDULLAH JUBRAN. Sworn.

Agricultural Officer of Haifa District. Since 1918 in Agriculture Department. Two days ago I inspected two plots of land in Hadar Hacarmel at eastern end of Herzl Street on which there were trees, one on each side of the road. That on left was the larger plot—they are those now marked A and B in red in Exhibit R.VIII. There was a man and two women on the land. Various trees, olive, fig, pomegranate, mulberry—a pepper tree on the beam of the road. Age of the majority of these trees about 30 years to my best knowledge.

Xen.: Olive and fig trees not below thirty years. Possible to bring a grown tree and transplant it.

Re-xen.: Not easy to do this. The Dept. has done this. All roots and earth from which taken are transported. Could not say if transplanting done in this case.

In the District Court of Haifa.

Defendant's Evidence.

No. 3 (r).
Hisni Jarrah,
23rd July 1943.

Cross-examination.

No. 3 (s).
Izchak Komornik,
23rd July 1943.

Examination.

Hatched in blue pencil in Ex. R.VIII.

Hatched in lead pencil in Ex. R.VII. D/10.

Hatched in blue on R.VII D/11.

Cross-examination.

No. 3 (t).
Abdullah Jubran,
23rd July 1943.

Examination.

Cross-examination.

Re-examination.

In the District Court of Haifa. 8 D.W. YOUSEF ELIAS MAJDALANI. Sworn.

Defendant's Evidence.

No. 3 (u).
Yousef Elias Majdalani,
23rd July 1943.
Examination.
Cross-examination.
Re-examination.

It is my signature on the mazbata dated 26.9.1933 in Land Registry File No. 1521/33. Know Malakeh Khoury Touma, a woman fair (hantiyeh) complexion. She is from Beyrouth. I met her in 1921-24 with late Saleem Matta, a Mukhtar : goldsmith by occupation. Met her three times—interval of four or five days. I spoke to her. I met her next three or four years later in the same place. I did not speak to her then. I saw her in 1933 when I signed the mazbata D/4.

Xxn. : She appeared to be between 45 and 50 in 1923. Did not see George Farazli with her. Do not know Nazireh Touma Kook. Knew 10 Malakeh well ; she was introduced to me by Saleem Mata. Had no business with her. She never mentioned to me her name was Malakeh. Saleem Mata brought me the mazbata to sign in the Land Registry. She was present when I signed. I saw her in 1928 when passing by Mata's shop.

Re-xd. : The signed the mazbata in my presence. Sure the same lady I saw in 1923 and 1928.

No. 3 (v).
Muhammad Khoury,
23rd July 1943.
Examination.

9 D.W. MUHAMMAD KHOURY. Sworn.

Clerk, District Court, Haifa. This is a true copy of original Power of attorney in Magistrate's Court file 2729/32 (D/12) that was produced 20 in Civil Case 94/1940 District Court Haifa. This is certified copy of revocation of the power of attorney (D/13) also in the same file. Both bear signatures Malakeh Khoury Touma. This is a true copy (D/14) of an application by this person to the Magistrate dated 22.1.1933 in the Magistrate's Court file. This is a true copy of a certified true copy of the judgment of the High Court in Case No. H.C. 67/31, which is certified by Chief Clerk of the District Court after being checked by me.

No Xxn.

No. 3 (w).
Joseph Grad,
23rd July 1943.
Examination.
Cross-examination.

10 D.W. JOSEPH GRAD. Sworn.

Lived in Haifa for 20 years. Was formerly agricultural assistant in 30 Department of Agriculture. Folio 27 in L.R. Haifa 573/23 file is a report made by me on 24.7.1924. This is a certified copy of the report (D/15) which I made on the day or the day after my inspection. The land was in Hadar Hacarmel. No street then at the time. I could not recognize it now—perhaps I could. It was near Wadi Rusmiyeh about 8-10 dunums. This is only land I inspected in that locality at that time. There was a Moslem Arab living on it : if I saw him I might recognise. I have not seen him since that day. This is only report I made between 1922 and 25.

Xxn. : Carob trees usually grow wild in Palestine. Never yet seen a transplantation of trees of 7 or 8 years. I have been in farming since a 40 boy. Theoretically it is very difficult. Possible to transplant a tree of two or three years. A root is sometimes taken and transplanted. It is possible the olive trees may have been transplanted some years previously. Zanzaleckt trees is usually transplanted when one year old. Apricot trees can be transplanted. As far as I can recollect I had no suspicion that trees were transplanted. I do not think that after three or four years it is possible to tell that a tree has been transplanted.

11 D.W. RAJEH SALEEM EL RAIS. Sworn.

I was given a power of attorney by Malakeh Khoury Touma a few years after the last great war. My cousin Amin Gabriel when I was in Beyrouth asked me to help this lady (*sic*) to safeguard her interest. I suggested she gave me a power of attorney and she did so. This is the power of attorney dated 19.11.1924 (D/12), shown to me in the file of Civil Case 2729/32 Magistrate's Court Haifa. I got this power of attorney in order to bring an action against trespasser on the land of Malakeh and her sister on what is now Hadar Hacarmel. I knew about this trespass
 10 before I went to Beyrouth. The land is mentioned in the power of attorney. As far as I know this only land she owns in Palestine. I advised Malakeh to force the trespasser to bring an action against him as one of her co-owners had brought an action against the trespassers and got judgment. I asked for funds. I received no funds. In 1932 I was notified that power of attorney had been revoked without any apparent reason. I have only once seen Malakeh in my life: it was in Haifa, after 1924. It was when the District Court was situated in the German Colony. It was before 1932. She visited me two or three days in succession in connection with the land and suddenly she left. She came to my office,
 20 the second day we went to the land. The third day we studied in the Court the case files of Nazareh Cook. I introduced her to advocate Najib Hakim. I did not see her again or receive any further instructions from her after she left.

Xxn.: It is possible it was February 1928.

Adjourned to Friday, 30 July, 1943, to complete.

(Sgd.) A. A. ATALLA. (Sgd.) S. WELDON, R/President.

Hearing of Friday, July 30th, 1943.

Appearances as before.

12 D.W. HASSAN KHALIL TIMSAH. Sworn.

30 Lived in Haifa since 1917 continuously. Before that lived in Beyrouth. Know Malakeh Khoury Touma. Often saw her in the streets in Beyrouth. First saw her in 1916. Married to Bishara Salibeh. Saw her in 1917 in Haifa when I was assistant inspector of police—she came to the police station where I worked. Next saw her at end 1921 in Khamra Square. Spoke to me and went with her to a land known as land of Hassan Zeideh and is now at end of Herzl Street in Hadar Hacarmel. Met Hassan Zeideh whom I knew previously. I advised him to settle with Malakeh. He refused claiming the land was his. Next I saw her in 1923 at the Magistrate's Court in the German Colony. She came with one Nazireh.
 40 I wrote a petition for her addressed to the Magistrate asking that Hassan Zeideh should be dispossessed of 3½ kirats of land belonging to her. I gave it to her and she left. Don't know what happened to it. First saw Hassan Zeideh on the land in 1917. Have seen him continuously on the land until this week. Land same land as he always occupied. Used to see him 20 or 30 times a year. He is known as Hassan Hawwari.

Xxn.: Petition writer from 1923 up to this date. Wrote many petitions—wrote for Muhammad Saifrai and others—civil actions. I can't remember particulars of other actions, except Sefran which was for £2

In the District Court of Haifa.

Defendant's Evidence.

No. 3 (x).
 Rajeh Saleem El Rais,
 23rd July 1943.
 Examination.

Cross-examination.

No. 3 (y).
 Hassan Khalil Timsah,
 30th July 1943.
 Examination.

Cross-examination.

*In the
District
Court of
Haifa.*

*Defendant's
Evidence.*

No. 3 (y).
Hassan
Khalil
Timsah,
30th July
1943,
Cross-
examina-
tion,
continued.

or £3.— No copies of petitions I write. Lived in Beyrouth for six years before the last war (1914–1918). Used to visit Haifa from time to time. Malakeh lived outside Beyrouth, don't know where. Was a police official in Beyrouth. She came in connection with a pickpocketing case. No other business with her. Don't remember particulars of other such cases. There were many. She came by chance to Police Station. In 1917 I went with her to the land. I found Hassan Zeideh there. Sure it was then. The same year as I arrived from Beyrouth. Saw 40 or 50 trees there. Almond, pomagranites and figs and zanzaleckt trees. They were bearing. Olive trees also. Trees of five or six years. In 1921 she spoke 10 to me about the land and then we parted. A week after I wrote her the petition; in 1927 I met her and she told me she was not going to stay here and that she was going to employ an advocate and return to Beyrouth.

By Court: It was in 1917 that I went with her to the land. When Zeideh refused to leave I told Malakeh to bring an action—a civil action.

No. 3 (z).
Itzhak
Ben Dov
Rabino-
vitch,
30th July
1943.
Examina-
tion.

13 D.W. ITZHAK BEN DOV RABINOVITCH. Sworn.

Licensed Surveyor since 1919 in various parts of Palestine. In practice in Haifa since 1938. Known Hassan Zeideh since 1941 personally. By face since 1921. Know the land he occupies. I surveyed it in 1941 at request of Mrs. Laham. It is marked A and B in exhibit R.VII and 20 R.VIII.

Known land since 1912. Was in Haifa until beginning of 1915. It had a stone fence round it. Did not know who occupied it. Returned to Haifa in 1920. There was then a building on it. I went on this land a few times to drink water. Then I knew this man's name. I knew him by face since 1912. In 1912 I was apprentice to an engineer Mr. Treidel who surveyed a piece of land in Bilan for a Dr. Rubin who bought a piece of land to the south of the land occupied by Hassan Zeideh. Between 1913 and this day I have often seen Hassan Zeideh living in this house on this land.

30

Cross-
examina-
tion.

Xxn.: In 1912 I was only a few days in adjacent land. I did not enter on the land. Remember there were a few trees there. No building, only a low dry stone wall. Saw a man digging there. I did not speak to him and had nothing to do with him. In 1912 I surveyed all the land of Hadar for parcellation. I surveyed then the land marked 2 on R.3. I used a copy of a map of which R/3 is a copy when I made my survey in 1921. This man I know now as Hassan Zeideh was then living in a little hut.

No. 3 (aa).
Khalil
Anwar
Fakhoury,
30th July
1943.
Examina-
tion.

14 D.W. KHALIL ANWAR FAKHOURY. Sworn.

Clerk Revenue Department. The document now shown to me dated 40 22.7.43 (D/16) is a true copy of Werko Register extract of Bilan locality of building constructed in 1338 Maliyeh. Document dated 20.11.1937 is a certified true copy of extract from Register of Urban Property Tax (D/17). There are ten receipts for Urban Property Tax in respect of this house.

Cross-
examina-
tion.

Xxd.: Shabatai Levy, Nazireh Cook Rose and Edmund Alexander all appear as registered owners in these block and parcel numbers. Werko Tax was paid by Hassan Zeideh on one room in the Bilan land.

15 D.W. SULEIMAN HAJ FARIS EL KURDI. Sworn.

*In the
District
Court of
Haifa.*

*Defendant's
Evidence.*

No. 3 (ab).
Suleiman
Haj Faris
El Kurdi,
30th July
1943.

Examina-
tion.

Cross-
examina-
tion.

Know Hassan Zeideh from 10 or 12 years before the war of 1914–1918. I was then a quarryman in Bilan land. Hassan Zeideh was putting a wall round land in Bilan locality and cultivating. I was a soldier in Turkish army. Returned before the end of the war. I deserted. I saw Hassan Zeideh on that land. Last time I went there was 15 or 16 years ago. Before that I used to see him there every year on that land. Muhammad Eid and sons of Aswad had quarries there to the East of Hassan Zeideh's land. To north of that land Mudawar, to west quarries, to the south
10 Road.

Xxn.: Never went on Hassan Zeideh's land: passed it on my way to work. I had no fixed place to work. I worked far from Zeideh's land. When I first saw him he was fencing the land—seven or eight years later I saw trees planted. This was about one year before the war. Big tall trees then. Olives, almonds, grapes. After I came back from the war he had built a hut. Saw no hut before the war. He lived then behind Churches Street, my neighbour. A year before the war he lived in a wooden hut on the land, with his wife on the south part of the land. There was only a track then when I last visited this land. Don't know
20 the area of the land even approximately. Trees all over the land. Never went on the land either before or after the war. Don't know who owns the land. I was away for 7 or 8 years from this area prior to the year before the war.

16 D.W. AUWAD NAKHLEH SOURI. Sworn.

No. 3 (ac).
Auwad
Nakhleh
Souri,
30th July
1943.
Examina-
tion.

Mason. Know Hassan Zeideh. He is also known as Hawwari. Known for two prior to the war of 1914–1918 when he was on land neighbouring land to which I was working on—to the south. He was making a wall and cultivating trees. I don't remember what trees or how many. I worked there for four years with Ibrahim Wa'abour. Saw
30 him there in 1917–18. After 1918 I saw him there. I used to be in that locality many times. Last saw him 13 or 12 days ago on the same land. There is a road there, some over part of the land—Herzl Street.

Xxn.: Don't know when he began to build a hut. There was hut there in 1912 about 12–15 metres from the south fence; it was a wooden hut. Did not see it after the war. He planted trees after the war. I had no business with him. Cross-
examina-
tion.

By Court: Knew him long previously when he worked in the Town as a cab driver.

17 D.W. GASPAS AGHAJANIAN. Sworn.

No. 3 (ad).
Gaspar
Aghajanian
30th July
1943.
Examina-
tion.

40 Execution Officer, Haifa District Court. File 499/24 contains report as to eviction dated 31.5.24. L.H.1 is a true copy. File renewed in 1928 as file 4199. Document now shown to me dated 31.12.21 (D/19) is a true copy of application in this file. There is a further application of 21.2.1929 for eviction by Weinshall. Order of delivery. No order of eviction by force. Exhibit L.H.2 is a true copy of a document in this file except in the thirteenth line of P/2 and L.H.2 the letter W () that appears between

*In the
District
Court of
Haifa.*

*Defendant's
Evidence.*

No. 3 (ad).

*Gaspar
Aghajanian,
30th July
1943,
Examina-
tion,
continued.*

*Judge's
Notes,
continued.*

the words "El Ghair Mouzud" and "Hassan el Zeideh" is not in the original. On 3.2.1930 Fouad Atallah on behalf of Nazeereh Cook applied for renewal and for eviction of Hassan Zeideh. This is a certified copy of application dated 1.7.1930 from Hassan Zeideh in this file (D/20) and further application dated 15.8.1930 by same person (D/21). This (D/22) is certified copy of order of High Court in this file dated 25.2.1932. This (D/23) is an order of High Court dated 3.4.1930.

Defendant's evidence closed.

Adjourned for final addresses, 9.30 a.m., Saturday, 31st July, 1943.

(Sgd.) S. WELDON, R/President. 10

Hearing of Saturday, July 31st, 1943.

Appearances as before.

SHAPIRO—addresses Court : Plaintiff purchase of mushaa miri land on old Turkish deed. Knew Defendant in possession—reputed owner in Wergo. Refer to C.A. 48/38, 5 P.L.R. 317 at p. 318. If they did not know their duty to enquire in view of the note on the deed that Defendant was owner. L.A. 39/32, Rotenberg, Action filed April, 1935. We have to establish possession for ten years prior to that date—land miri land. Interruptions or admissions after ten years have elapsed have no effect. Have been in possession already in 1901. Abdu Shahin Jabr, Suleiman 20 Kurdi, Ali Othman. Abdur Rahman in previous land case P/5 is not land owner in this case. 129/36, Rot, 9, p. 736. 42/41, Appelbom 1941, p. 200. (NOTE:—It is as to credibility!) There is even evidence of possession from 1914. Victor Mudawar, Michael Najeeb Abu Fadel, Awwad Souri, Rabinovitch. Trees all planted by Defendant. All about 30 years old (1) Abdallah Jabran, (2) Grad. Hujjah 13 Nisan 1332 shows Defendant as a neighbour to land that adjoins the land under question (D/2, D/3).

As to evidence rebutting long possession. (1) Rosenberg evidence. Wadi Rushmiyeh is to East not West as he states. (2) Farazli and Baz 30 contradicted by Grad and Jubran as to age of trees and contradict each other as to dates. Even Defendant admits we were there since 1920.

Art. 20 Ottoman Land Code. Qualifications thereto. No evidence of "absence" (mudat es Safr). No evidence Molakeh Touma permanently in Beyrouth. No evidence Beyrouth more than three day travel—same voyage of hours—geographical distance not present. Refer to notice to admit of Weinshall dated 17 May 1940. Evidence of Hassan Timsal as to seeing Malakeh at three specified dates 1917, 1921, 1923. Evidence of Majdalani—1923. Evidence of Raj el Rais. Fact agent out of Palestine does not do away with excuse. L.A. 49/32, Rotenberg. 40

The eviction proceedings (?) L.H.1 and L.H.2—no actual eviction. In fact there were several subsequent applications to evict. D/19 as late as 1928. No order of removal by force. Not possible to evict except from the shares of the decree holder. forcible ejection without a lawful decree does not interrupt prescription. Anyhow Nazeereh Cook actions have no avail for present Plaintiff. Criminal proceedings of 1920—F.H.1, S.H.1, S.H.2—not between same parties. C.A. 113/40 7 P.L.R. 363.

Admissions to arbitrary taking possession. P/3 not admissible. Copy of copy of copy.

(WEINSHALL : I don't rely on P/3.)

Ask judgment for Defendant with costs, fees, etc.

WEINSHALL addresses Court : (1) Issue of legal title settled in Plaintiff's favour. (2) Issue of whether kushan applies to the land settled by report of Saleh Hakim not rebutted. (3) Issue of prescription—onus on Defendant to prove that for 10 consecutive years prior to commencement of this action he was in undisputed undisturbed possession.

*In the
District
Court of
Haifa.*

Judge's
Notes,
continued.

10 (a) Defendant not called by Plaintiff.

(b) Most of Defendant's witnesses never entered on the land—only passed by.

1921—criminal action by Farazli on behalf of Nazeereh Cook in respect of whole land against Hassan Zeideh and others. 11.4.1921—Magistrate's inspection and report—land not cultivable—in presence of parties. Magistrate's order handing over of whole land to Nazeereh Cook. Criminal case by one co-owner may be brought in respect of whole land. L.A. 29/29, 1 P.L.R. 422. 1923—Defendant applied for registration of whole land in his name. Refused on objection by the co-owners.

20 Defendant brought action 9/24 against Nazareereh Cook for whole land obtained judgment, quashed on appeal. Case then dismissed by Land Court 29.9.26 and dismissal upheld by Supreme Court.

As to L.H.1—Land was handed over to me as attorney by Execution Officer. Room to be handed over next day. Therefore possession of land re-vested in Nazeereh Cook on 24.5.24. B.L.H.2—whole land handed over. Criminal Case of 1928—Defendant convicted for re-entry after dispossession. Conviction confirmed on appeal. 1937 land transferred to Molakeh Touma. 1935 this action brought. Criminal action of 1921, Land action of 1924–27—interrupted prescription. Disposition (?) 1928
30 case interrupted prescription. Possession prior to 1921 irrelevant. Prescription is a defence that must *exist* at time action *brought*. Old prior prescription if interrupted may not be invoked as a defence.

As to possession. George Farazli was a good witness corroborated by Saadiyeh Paz, and it appears Defendant appeared on land in 1916 and began to build in 1917–18, planted 1920. Magistrate's report land incapable of being cultivated.

As to absence. Proved that Malakeh permanently resident in Beyrouth—it was on Defendant to prove the contrary. Land Court Jaffa 19/21, Rotenberg 1802. No adverse possession proved in 1907. Even if
40 Court accepts possession commenced in 1912 it was contested in 1921.

C.A. 27/27, C.L.R. 5, 193—specified date must be alleged and proved from which adverse possession runs.

Ask for judgment in my favour with costs, fees, etc.

Judgment reserved.

(Sgd.) A. A. ATALLA.

(Sgd.) S. WELDON,
Relieving President.

31st July, 1943.

*In the
Land
Court,
Haifa.*

No. 4.

APPLICATION by Dr. Weinshall for the summoning of witnesses and for evidence to be taken on commission.

Haifa, 14th April, 1938.

No. 4.
Application
by Dr.
Weinshall
for the
summoning
of witnesses
and for
evidence to
be taken on
commission,
dated 14th
April, 1938.

**IN THE LAND COURT,
Haifa.**

**Between EDMUND and ROSE ALEXANDER
represented by Dr. A. Weinshall, advocate,
Haifa - - - Plaintiffs**

vs.

**HASSAN ABU ZEIDEH, represented by
Mr. J. Asfour, advocate, Haifa Defendant.**

10

Land Case No. 22/35.

1. In accordance with the ruling of the Honourable Court a third issue was added in the above proceedings, namely, "Does the Plaintiff's kushan include the land claimed by him in this case?"

2. It has been admitted by the defence that the kushan produced in this case refers to Block 64 Parcel 3 and that Parcel 3 is a portion "A" of Plaintiff's Kushan, but it was alleged that portion "B" is not included in the Kushan.

20

The following statement was made by Defendant's attorney at the hearing of the 5.4.38: "The Kushan refers only to Block 64 Parcel 3. Block 64 Parcel 3 is portion of 'A' of Plaintiff's plan."

3. In view of this admission there is no necessity for the Plaintiffs to prove that Portion "A" of the plan is included in the Kushan.

4. In order to prove that the Kushan covers also portion "B" the Plaintiffs intend to produce documentary evidence which will be submitted to the Honourable Court in due course and to call the following witnesses to give evidence before the Court:

- (A) Mr. Hoz, licensed surveyor
- (B) Mr. Saadia Paz
- (C) George Farazli, Haifa
- (D) The Execution Office, Haifa
- (E) The Chief Clerk, Magistrate's Court, Haifa.

30

5. As regards the issue of prescription, the Plaintiffs in order to prove the absence of their predecessor in title, intend to call the evidence of the following persons on commission:—

- (A) Malakeh bint el Khoury Touma, wife of Beshar Salibi, Gemizeh, Beyrouth
- (B) Nesjeb Ladcani c/o Regie de Tabacs Beyrouth
- (C) Mr. Antoine Wakil, près Eglise St. Nicolas, Beyrouth
- (D) Mikhail Chagouri, c/o Rev. Père Habib Hoché, Orthodox Patriarchate, Damas.

40

6. In view of the fact that the onus of proof of the last issue has been placed by the Honourable Court on the Defendant and that the Defendant has called several witnesses to prove his allegation, the Plaintiffs reserve their right to call rebutting evidence if it would be necessary.

7. A copy of this application is attached for service on the Defendant.

8. I undertake to pay the allowance fees for the witnesses when requested by the Honourable Court.

(Sgd.) A. WEINSHALL,
Attorney for Plaintiffs.

*In the
Land
Court,
Haifa.*

No. 4.
Application
by Dr.
Weinshall
for the
summoning
of witnesses
and for
evidence to
be taken on
commission,
dated 14th
April, 1938,
continued.

10

No. 5.

REPORT of the Referee, Mr. Saleh Hakim.

IN THE LAND COURT HAIFA.

LAND ACTION No. 22 of 1925.

ROSE & EDMUND ALEXANDER

V.

HASSAN OMER ZEIDEH.

No. 5.
Report of
the Referee,
Mr. Saleh
Hakim,
dated 5th
May, 1940,

On the 15th March, 1940, Your Honourable Court appointed me to :—

20 “ . . . enquire into the following matter viz. whether the plot ‘ B ’ as shown on the map produced by the Plaintiffs is covered by the Plaintiffs’ kushan and for that purpose to hear evidence, documentary and oral on the spot, to examine the place in the presence of parties’ advocates and to report to this Court. Parties’ advocates agree to pay any reasonable remuneration and expenses that the Court may sanction. Report to be filed within three weeks. Case to be listed thereafter by the Registrar on application by Dr. Weinshall.”

2. On the 5th April, the Court, on my application to which the parties’ advocates agreed, extended this period till the 6th May, 1940.

30 3. I have heard the evidence of six witnesses called by Dr. A. Weinshall on behalf of the Plaintiffs, one witness called by Mr. George Mu’ammam on behalf of the Defendant. On my accord I called a clerk from the Land Registry Haifa to enable me to peruse the requisite documents relating to the transfer of the shares of Plaintiffs in the land in dispute. All the evidence of the witnesses was heard on the land itself with the exception of part of the evidence of George Farazli who could not be out of his bed, being a sick man, more than necessary. Part of his evidence was taken at home and then he went with us to the land and

*In the
Land
Court,
Haifa.*

pointed to boundaries etc. The evidence of the clerk of the Land Registry was not heard on the land itself.

4. Having heard the evidence and perused the documents tendered, I have the honour to report to Your Honourable Court as follows :—

No. 5.
Report of
the Referee,
Mr. Saleh
Hakim,
dated 5th
May, 1940,
continued.

5. The present Plaintiffs derived their registered title to three and a half out of twenty four shares in the land in dispute from a certain Malakeh Khoury Touma. When this transfer took place in the Land Registry of Haifa (file No. 1521 of 1933), the parties submitted a petition of sale and a Mukhtars Certificate. In both these documents the boundaries given in the Plaintiffs' kushan were referred to in these two documents. 10
These boundaries include plots "A" and part of "B" on Plaintiffs' plan. A reference, however, was made in both these documents to Block 64, Parcel 3 (being the Werko registration number), which, according to the Urban Assessment Block plan only included plot "A" in plan produced by Plaintiffs. The Deed of Sale, however, which is signed by both parties to the sale and by the Registrar of Lands, Haifa, while giving the same boundaries does not restrict the sale to the Block and Parcel numbers given in the Petition of sale and Mukhtars' certificate.

6. The question as to whether the transfer to Plaintiffs by Malakeh Khoury Touma is restricted only to Block 64, Parcel 3, i.e. to plot "A" 20
on Plaintiffs' plan, or whether it also included such part of plot "B" on same plan, is for Your Honours to decide.

P.1.

P.1.

7. Dr. A. Weinshall argued that the question that plot "B" shown on Plaintiffs' kushan formed part of the land registered in the name of certain members of Khoury Touma's family (who included Malakeh the Plaintiffs' predecessor in title) was decided upon by the Land Court Haifa, in Land action No. 9 of 1924, Hassan Zeideh v. George Farazli as agent for Nazireh Cook (née Touma). The present Defendant, Hassan Zeideh, applied to Land Registrar, Haifa, for a title deed in respect of a plot of land shown on a plan prepared by him. His application was 30
refused. He instituted proceedings in the Land Court Haifa, asking for an order for registration basing himself on his possession. On the 23rd February, 1925, this Court gave a judgment in his favour. The Supreme Court, however, set aside the judgment. The learned Acting Chief Justice (Corrie J.) (who dissented from the majority's judgment) held the view that the provisions of Art. 20 of the Ottoman Land Code could only be used as a defence. The other two learned Judges (Jarallah and Khayat JJ.) remitted the action to the Land Court for the latter to determine the question of the absence of the Defendant from Palestine which may bar the period of prescription. 40

R.4.

R.12.

R.13.

8. On the 29th September, 1926, the Land Court, Haifa held that the then Defendant's absence from Haifa barred the period of prescription and dismissed Hassan Zeideh's claim. I have carefully perused the judgments given in that action and I find that neither this Court nor the Supreme Court ever determined in the said proceedings the question I was directed to enquire into and report to Your Honours.

9. Now coming to the oral and documentary evidence tendered: Dr. A. Weinshall called five witnesses (other than a Licensed Land Surveyor) who knew the land; namely :

(A) Saadiéh Paz : agent of the Palestine Land Development Company which owned land forming the southern boundary of plot " B."

*In the
Land
Court,
Haifa.*

(B) Lion Levy who said that he knew land in dispute for a long time. During the World Great War he intended purchasing land in the vicinity (i.e. Dakheel's land which is to the west of the land in dispute).

No. 5.
Report of
the Referee,
Mr. Saleh
Hakim,
dated 5th
May, 1940,
continued.

10 (C) Muhammad Ali Ghuimieh who stated that during the World Great War he did some quarrying in the land. This witness was not sure of his answers and I do not believe his story.

(D) Itzhak Zalel who also knew land since 1906. His father was approached by the P.L.D.C. for the sale to him of land in the vicinity.

20 (E) George Farazli who said that he knew land since 1913. He became agent for Elias Khoury Touma and Nazireh Cook (née Touma) in 1921. He, in 1922, proceeded with the then Land Registrar, Elias Dakheel together with the Land Registry Surveyor and prepared a plan of the lands of both the Khoury Touma and Khoury Farra's lands. Elias Dakheel owned land in the vicinity which is to the west of the land in dispute. This witness acted as agent in all proceedings in Court and with the Police. This witness further stated, on being cross-examined by advocate for Defendant, that Defendant not only encroached on Khoury Touma's land but also to some extent on the Khoury Farra's land.

10. The only witness brought by the Defendant's advocate was an expert witness to apply the plans to land.

30 11. All the witnesses who said knew the land had some difficulty in pointing the boundaries in view of the fact that the lands in that vicinity has changed two roads passing through the land in dispute have more or less recently been built and several buildings have been erected in the vicinity. Nevertheless these witnesses did not differ much in the boundaries pointed out by them. All of them stated that stone built pillars were placed round the land in dispute and that the pillars separating the Touma's from the Farra's lands were all in a straight line. This line being the most important as far as the point I have to report thereon is concerned.

40 12. I have inspected the land and after very careful consideration of all the facts I find that the plan known as Farazli's plan is an accurate plan of the land in dispute, namely, the land which was registered in the name of certain members of the Khoury Touma's family. It was prepared some eighteen years ago by the Land Registry surveyor on the directions of the Land Registrar of Haifa who knew the locality as he owned land adjacent to it and by a man who knew the land and who was the agent of two of the registered owners. The line separating this land from the Farra's land is a straight line and this tallies with the story of the witnesses who said that the stone built pillars separating the Touma's from Farra's lands were in a straight line. Mr. Mu'ammár, on behalf of the Defendant, has not brought any evidence to rebut the evidence of these witnesses whose evidence generally and more particularly that of George Farazli
50 I believed.

*In the
Land
Court
Haifa.*

R.5. 13. On my directions, Mr. Hoz, a licensed Land Surveyor has applied
P.1. the Farazli's plan on the plan produced by Plaintiffs and placed a line,
marked A-B, on the latter plan, being the line that separated the Touma's
from Farra's lands.

No. 5.
Report of
the Referee,
Mr. Saleh
Hakim,
dated 5th
May, 1940,
continued.

P.1. In conclusion I humbly report to Your Honourable Court that the
R.9. part of plot " B " on Plaintiffs' plan lying to the west and North-West
of the line marked A-B is included in the Kushan produced by Plaintiffs.

14. In submitting this report, I have the honour to forward the
record of proceedings together with the fourteen exhibits produced by
Dr. A. Weinshall for the Plaintiffs. 10

15. The hearing of the evidence of the witnesses and the arguments
of advocates for both parties has taken ten different afternoons, approxi-
mately twenty-eight hours in all. I have incurred no expenses as advocates
for both parties took me in their own cars to the land. May I humbly
request the Court to sanction the payment of such remuneration to me
as Your Honours may deem fit.

Humbly submitted.

5th May, 1940.

(Sgd.) A. A. HAKIM.

No. 6.
Motion
by Dr.
Weinshall
for the
hearing of
4 witnesses
on com-
mission,
dated 17th
May, 1940.

No. 6.

MOTION by Dr. Weinshall for the hearing of four witnesses on commission. 20

IN THE LAND COURT
Haifa

Case No. L.C. 22/35.

Between ROSE & EDMUND ALEXANDER Plaintiffs

vs.

HASSAN ABU ZEIDEH Defendant.

NOTICE OF MOTION.

TAKE NOTICE that the Land Court will be moved on the 29th day
of May, 1940 at 9 o'clock in the forenoon or so soon thereafter as counsel
can be heard by the above named Plaintiffs that this Honourable Court
shall direct to take the evidence of Malakeh Khoury Touma, Nesjeh 30
Ladcani, Antoine Wakil and Mikhail Chajouri on commission as prayed
by the Plaintiffs in their applications dated 14.4.38 and 17.5.40, copy
of which is attached hereto and that the costs of this application will be
costs in the cause.

Dated this 17th day of May, 1940.

(Sgd.) A. WEINSHALL,
Counsel for Plaintiffs.

To Hassan Abu Zeideh

No. 7.

AFFIDAVIT sworn by Malakeh Khoury Touma, attached to Dr. Weinshall's motion of 17.5.1940 in L.C. 22/35.

In the
Land
Court,
Haifa.

AFFIDAVIT.

I, the undersigned MALAKEH BINT EL KHOURY TOMA do hereby solemnly swear and declare that I have never been during my life in Palestine except :

No. 7.
Affidavit
sworn by
Malakeh
Khoury
Touma,
attached
to Dr.
Weinshall's
Motion of
17.5.40 in
L.C. 22/35,
dated 28th
July, 1937.

10 (A) in Elul 1935 when I appeared in order to accept the transfer from the late Elias Ibn El Khoury Toma of certain shares in the properties situated in Haifa Bellan locality and bounded :

North : Hanna Attalla & Beshara Mudawar to-day road.

South : Attalla & Mudawar, to-day Moh. Taha.

East : Salha to-day Gubrail Anton Khoury.

West : Road opposite Dakhil.

(B) on the 2nd of February 1928 A.D. when I accompanied a relative of mine on a short trip.

(c) on the 28th September 1933 when I accompanied Mr. Edmund Alexander and Mrs. Rose Alexander to transfer to them the property of my aforesaid shares.

20 (Sgd.) MALAKEH KHOURY TOUMA (*in Arabic*).

Sworn and subscribed to, before me, at the British Consulate-General at Beirut, this twenty eighth day of July, 1937, by Malaké d/o Michel Thomas, of Beirut, duly identified by her Lebanese Identity Card No. 110/390 dated August 31st, 1933.

(Sgd.) Illegible

British Pro-Consul.

Stamp
Consular Service Stamps.
4s. 2s. 6d.



In the
Land
Court,
Haifa.

No. 8.

APPLICATION for leave to take the evidence of Malakeh Khoury Touma on commission.

IN THE LAND COURT,
Haifa.

Land Case No. 22 of 1935.

No. 8.
Application
for leave
to take the
evidence of
Malakeh
Khoury
Touma on
commission
dated 15th
April, 1942.

Between ROSE and EDMUND ALEXANDER Plaintiffs
and
OMAR HASSAN ZEIDEH Defendant.

NOTICE OF MOTION.

TAKE NOTICE that the Land Court will be moved on the 28th day of May, 1942, at 9 o'clock in the forenoon or so soon thereafter as counsel 10 can be heard by the above named Plaintiffs that this Honourable Court may grant leave to take the evidence of Malakeh Touma of Beyrouth on Commission on the grounds set out in the attached Affidavit and that the costs of this Motion be costs in the cause.

Dated this 15th day of April, 1942.

(Sgd.) A. WEINSHALL,
Counsel for Plaintiffs.

To Omar Hassan Zeideh,
c/o Jacob Shapiro, advocate,
Haifa.

20

No. 9.
Affidavit
sworn
by Dr.
Weinshall
attached to
the above
motion of
15.4.1942,
dated 11th
November,
1941.

No. 9.

AFFIDAVIT sworn by Dr. Weinshall attached to the above motion of 15.4.1942.

IN THE LAND COURT,
Haifa.

Land Case No. 22 of 1935.

Between ROSE and EDMUND ALEXANDER Plaintiffs
and
OMAR HASSAN ZEIDEH - Defendant.

AFFIDAVIT.

I, Dr. A. WEINSHALL, advocate, Haifa, make oath and say as follows :—

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1. I am the advocate for the above named Plaintiffs in this case and I have conducted the present proceedings on their behalf.

2. In my opinion it is necessary to take the evidence of Malakeh Touma of Beyrouth, as her evidence is very important for the case of the Plaintiffs.

3. The said Malakeh Touma, who resides in Beyrouth, is the predecessor in title of the present Plaintiffs to the land which is the subject matter of the present dispute.

In the Land Court, Haifa.

4. I have requested the said Malakeh Touma to come to Haifa in order to give evidence and I have offered her to pay all and any expenses for her journey to Haifa, but I was unable to obtain her attendance in Haifa.

No. 9. Affidavit sworn by Dr.

5. At first I was informed that the said Malakeh Touma is unable to come to Haifa owing to difficulties for her to obtain a visa to enter Palestine. I moved the Court to take her evidence on commission on that ground and the application was refused on 29.5.40.

Weinshall attached to the above motion of 15.4.1942, dated 11th November, 1941, continued.

6. Thereafter I endeavoured to obtain for the said Malakeh Touma a visa enabling her to come to Palestine and on the strength of a certificate of His Honour the Registrar of this Court a visa was granted by the Migration Department.

7. I then informed my correspondents in Beyrouth: Messrs. D. I. Murr and his associate, that a visa for Malakeh Touma was obtained and I instructed them to secure attendance of Malakeh Touma in Court.

On the 22.4.41 I received a cable from my correspondent reading as follows: "Malakeh agrees against advance ten Pounds cable consent." I replied on the same day "Try best reduce otherwise pay ten."

8. In spite of all endeavours of my correspondents in Beyrouth and their readiness to pay to Malakeh the amount asked by her the said Malakeh Touma refused to come to Haifa.

9. On the other hand my clients who reside in Cairo have on their turn tried to persuade the said Malakeh Touma (through their friends in Beyrouth) to come to Haifa for this case, but they as well failed, and a few days ago I received a letter from my clients dated 10.10.41 informing me that it was impossible to obtain Malakeh's consent to proceed to Haifa and enclosing a telegram dated 9.10.41 issued from Beyrouth saying "Malake refuse voyager."

10. Neither I nor my clients have any powers of compelling the said Malakeh Touma to come to Haifa and both my clients and myself have made all what could be done in order to secure the attendance of Malakeh Touma before this Honourable Court.

Sworn before me by the above named }
Dr. A. Weinshall

(Sgd.) A. WEINSHALL

This 11th day of November, 1941.

(Sgd.) K. SHIHADAH,
Registrar.

40

RECORD of hearing of the above motion.

In the District Court of Haifa, sitting as a Land Court.

Land Case No. 22/35.

IN THE DISTRICT COURT OF HAIFA
Sitting as a Land Court.

No. 10.
Record of hearing of the above motion, dated 28th May, 1942.

Before : Their Honours the R/PRESIDENT (Judge Weldon) and Judge A. ATALLA.

In the Case of :

ROSE and EDMUND ALEXANDER Plaintiffs

V.

10

OMAR HASSAN ZEIDEH Defendant.

Hearing of—28th May, 1942.

Nature of Claim or Application : Application for leave to take the evidence of Malakeh Touma of Beirut on commission.

For Applicant : Weinshall.

For Respondent : Shapiro.

WEINSHALL : Have done everything to induce the lady in question to come and give evidence. After agreeing she now refuses. Prepared to pay costs of other side to brief advocate to cross-examiner her if Court grants permission for evidence to be taken on commission.

20

SHAPIRO : Affidavit deposed to by Dr. Weinshall—contrary to proper practice. Long delay in submitting this new application. Position not changed since last ruling of Court on this matter two years ago.

WEINSHALL : Nothing to prevent advocate deposing to affidavit a fact in his knowledge. No undue delay : endeavoured to get her all the Court Vacation. She refused finally in October and early November I filed my application. Only question is it possible to get her to come—this we cannot do. No delay by letters as case not yet fixed and cannot come off until after Court Vacation.

COURT : We do not see any fresh ground for altering the previous decision of this Court—given when differently constituted from the present. Application is dismissed with LP.2 costs awarded Respondent.

(Sgd.) A. A. ATALLA

(Sgd.) S. WELDON,

R/President.



No. 11.

JUDGMENT of the Land Court.

Land Case No. 22/35.

IN THE LAND COURT OF HAIFA.

Before : Their Honours the R/PRESIDENT (Judge Weldon) and
Judge ATALLA.

In the Case of :—

ROSE ALEXANDER, and EDMUND ALEXANDER,
of Cairo, Egypt

Plaintiffs

10

V.

HASSAN IBN OMAR EL ZEIDEH

Defendant.

*In the
Land Court,
Haifa.*No. 11.
Judgment
of the Land
Court,
dated 15th
September,
1943.

1. This action which was commenced in April, 1935, has had a chequered career. It has been before several differently constituted Courts. It came for the first time for hearing before Judges Shaw and Shems. Then it came before Judge Edwards and Atalla and on the elevation of Judge Edwards to the Supreme Court it came before this Court as at present constituted. There were a large number of hearings involving a great deal of evidence and the case was only concluded on the 31st of July, 1943.

20 2. In the Statement of Claim which was filed on the 3rd of April, 1935, Plaintiffs' advocate, Dr. Weinshall, alleges that the Plaintiffs are the owners of 14 shares out of 96 shares in a plot of land situated in the Ballan locality in the town of Haifa, bounded :—

North : Hanna Atalla & Bishara Mudawar, to-day road.

South : Atallah & Mudawar, to-day Muhammad Taha.

East : E. Salha, to-day Gubrail Anton Khoury.

West : Road opposite Dakhil.

30 He alleged that the Defendant was unlawfully contesting the Plaintiffs' right of ownership and prayed that a judgment be given to the effect that the Plaintiffs are entitled to 14 shares out of 96 shares in the land in question and that Defendant is not entitled to contest their ownership in respect thereof. In support of Plaintiffs' claim their advocate lodged a certificate of registration No. 2318 of 28th September, 1933, and a plan, Exhibit P.1.

Defendant's defence was two-fold, namely :—

(1) That the particulars given did not sufficiently identify the land claimed.

(2) That if the land referred to in the kushan and map was in fact the same which Defendant possesses, then the claim was barred by prescription, Defendant having been in possession thereof for a very long period of time.

40 3. The Court as first constituted framed the following two issues on the pleadings :—

1. Had the Plaintiffs a good legal title to the land ?

2. Has that title become barred by the possession of the Defendant for the prescriptive period ?

*In the
Land Court,
Haifa.*

No. 11.
Judgment
of the Land
Court,
dated 15th
September,
1943,
continued.

The Court then proceeded to determine the first issue and for that purpose heard the evidence adduced by the Plaintiffs and the Defendant. On the 11th April, 1938, the Court gave a decision in regard to the first issue in favour of the Plaintiffs. The concluding part of their judgment reads as follows : " The result is that we find for the Plaintiffs upon the first issue subject to their establishing that the Kushan on which they rely includes the land which they are claiming."

The Court added a third issue, namely :—

3. Does the Plaintiffs' kushan include the land claimed by him in this case ?

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4. In consequence this Court was only concerned with deciding the second and third issues. With regard to the third issue the Court with the consent of both parties appointed Mr. Saleh Hakim as a referee under Rule 221 to enquire as to whether plot B as shown in the map produced by Plaintiffs' Exhibit P.1 (which Defendant advocate alleges was not covered by the Kushan) was in fact covered by the Plaintiffs' Kushan and for that purpose to hear evidence documentary and oral on the spot, to examine the place and to report. Mr. Hakim having complied with this order submitted a report dated the 5th of May, 1940, in which he reported that the part of plot B on Plaintiffs' map Exh. P.1 lying to the West and North-West of the line marked A-B is included in the Kushan produced by Plaintiffs. Both parties appear to have accepted the conclusion of the referee as neither of them has in any way objected to or attacked his finding. In the circumstances therefore we adopt Mr. Hakim's report and find as a fact that the part of plot B on map Exhibit P.1 lying to the West of the line marked A-B is covered by the Kushan produced by Plaintiffs.

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5. Coming now to the second issue namely whether the Plaintiffs' title is barred by prescription, Defendant's advocate alleged that his client has been in continuous uninterrupted and undisturbed possession of the whole of the land for a period exceeding that of prescription. The burden of proof to establish this allegation was placed by the Court on the Defendant. He has led a considerable amount of evidence both oral and documentary in support of his allegation. The evidence of Abdo Shaheen Jaber, Ali Saleh Othman and Suleiman Fares Al-Kurdi Katbeh, which we believe, goes to show that Defendant's possession of these lands commenced in the first decade of the present century. We are satisfied from their evidence that Defendant in fact commenced to possess and occupy this land some time between 1903 and 1905. It must be remembered that the registered owners of the land were absent from Haifa and had no agent to look after the land at that time. It is true that George Farazli, who gave evidence for Plaintiffs said that he used to inspect the land from time to time on behalf of one of the co-owners Elias Khoury Touma who was in Beyrouth, but there is no suggestion or allegation that the register owners were in fact occupying or cultivating the land and there is nothing therefore strange in the Defendant taking possession of the land. George Farazli stated that before 1919 he had no interest in the land in dispute except that he visited it on behalf of the owners. We believe that at the beginning Defendant's possession took the form of fencing the land by building loose dry stone walls and by patch cultivation ; but about the commencement of the War of 1914 or shortly

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40

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before we are satisfied that he commenced planting trees. Shortly afterwards he built a stone hut and still later a large number of wooden barracks were erected on the land. At first the Defendant did not live on the land, but only came there to work. It was only about 1914 that he came to live on the land and we are satisfied that since that date he has continued to live on the land without interruption. Defendant's advocate filed a "hujja" dated the 13th of April, 1332, in respect of an adjoining piece of land. The name of Hassan Howwari, namely, the Defendant who is known by this name also, appears as one of the adjoining owners.

10 This shows that in 1914 at least Hassan Zeideh was the reputed owner of the land in dispute. The evidence which Plaintiffs' advocate adduced in regard to the question of the possession of this land was most unsatisfactory. It consisted of the evidence of George Farazli, who as mentioned above, visited the land a few times between 1913 and 1916. He gave no evidence whatever as to the period prior to 1913. He was away from Haifa between the years 1916 and 1919. Plaintiffs brought no other witnesses to speak as to the period prior to 1913.

*In the
Land Court,
Haifa.*

No. 11.
Judgment
of the Land
Court,
dated 15th
September,
1943,
continued.

6. In order to succeed in his defence of prescription the Defendant must establish that his possession for at least a period exceeding 10 years prior to the commencement of the action has been continuous, uninterrupted and undisturbed. Plaintiffs' advocate adduced evidence to show that in the year 1921 a certain Nazira Cook, one of the registered co-owners of the land in dispute, instituted criminal proceedings in the Magistrate's Court against the Defendant for trespass on her land, and that the Defendant was convicted of trespass and ordered to be dispossessed. This judgment of the Magistrate is dated the 12th of April, 1921, No. 270. It appears that the Chief Execution Officer ordered the execution of this judgment and on the 31st of May, 1924, an Execution Clerk was deputed to carry out the order. A copy of the report of the Execution Clerk

20 (Exhibit L.H.1) was produced. The report states that the clerk proceeded to the land together with Judgment Holder's advocate Dr. Weinshall and delivered the land to him. It adds that in view of the absence of the person against whom the Decree is given the room and kitchen erected on the land were not vacated, but the wife of the person against whom the decree was given undertook to vacate the place and to deliver the keys on Monday, the 2nd of June, 1924, at 8 o'clock. This undertaking was never carried out and the Defendant and his wife continued to remain on the land and to occupy the rooms in question. As a consequence a further attempt was made by Dr. Weinshall to dispossess the Defendant from the

30 land and on the 8th April, 1929, a clerk of the Execution Office proceeded to carry out the order of the Execution Officer of the 1st March, 1929, to deliver the land to the Decree Holder Nazira Cook. The Defendant Hassan Zeideh was again not present on the land. The report states that the whole of the land was delivered over to the attorney of Nazira Cook and that the wife of the Defendant together with one Elias Ankeiry were informed that whoever trespassed on the land in future would be dealt with according to law. In fact, however, we are satisfied that Hassan Zeideh was never removed from the physical possession of the land or from the huts, but continued to remain therein in physical possession. The handing over

40 was merely a formal paper transaction. Defendant in fact applied to the High Court and that Court in its judgment No. 67/31 of the 25th day of

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*In the
Land Court,
Haifa.*

No. 11.
Judgment
of the Land
Court,
dated 15th
September,
1943,
continued.

February, 1932, issued an order to restrain the Chief Execution Officer of Haifa from ordering or causing the judgment of the Magistrate's Court of Haifa, No. 270 of the 12th April, 1921, from being executed in respect of the whole land. It ordered that execution should be confirmed only to such share or shares of the said land as the said Nazira Cook may be entitled to under the Kushan upon which her claim in the Magistrate's Court of Haifa was based. No evidence was led before us to show that in fact after this order Hassan Zeideh was ever divested of his physical possession or ejected from the land, nor can we see how this could have been done in the face of this order of the High Court. We have therefore come to the conclusion that the Defendant Hassan Zeideh remained in actual physical possession of the land from the time his possession commenced about 1903 until the present day. Dr. Weinshall contends that the two reports of the Execution Clerk, L.H.1 and L.H.2 dated respectively the 31st of May, 1924, and the 8th of April, 1929, operate as an interruption of Defendant's possession. We do not agree with this contention, in the first place, because, as we have already stated, the Defendant was never divested of his physical possession of the property by eviction or ejection, and secondly, because, in the particular circumstances of this case, the eviction, if eviction was ordered, could only apply to the shares owned by Nazira Cook and not to all the shares owned by the other co-owners of this property who were not parties to those proceedings, i.e. Criminal Case 270 of 1921. This is quite clear from the judgment of the High Court, Exhibit, D.22. It is true that the Defendant was convicted and sentenced in 1930 by the Magistrate's Court for trespass upon the land of Nazira Cook and that this conviction was upheld on appeal to the District Court, but in our opinion these proceedings cannot constitute an interruption of Defendant's actual possession of the land concerned in the present action, for there is nothing to show that any further action was taken except to fine the Defendant the sum of LP.5 and there is no further evidence of any other action being taken against him.

7. Dr. Weinshall next submits that the predecessor in title to the present Plaintiff, Malakeh Touma was absent from Haifa at a distance of "Mudat Safar," namely, in Beirut, and that therefore prescription does not run against her. It was the Plaintiffs' duty to show that in fact this person Touma Malakeh was absent at all material times from Haifa. Dr. Weinshall in fact led no evidence as to this with the exception of that of George Farazli who stated that he never saw Touma Malakeh in Palestine. This is evidence of a purely negative character. In cross-examination he said he did not remember if he saw Malakeh after he came to Haifa in 1898. He knew that she was born in Beirut and lived in Beirut. On the other hand Defendant called several witnesses who testified that Malakeh had been in Palestine in 1917, in 1921, in 1923 or 1924 and in 1933. Dr. Weinshall on the other hand admitted that she was in Palestine in 1325 when she accepted transfer of the property in her name, which corresponds to the year 1909 A.D., and in 1928 and 1933. In this connection we desire to record that we believe the evidence of the witness Hassan Timsah, who said that he saw Malakeh in 1917 at Haifa and proceeded with her to the land where they met Defendant Hassan Zeideh. He advised Hassan Zeideh to settle with Malakeh, but the latter

refused to do so and said he did not know her. We believe also that he saw her again in Haifa in 1921 and 1923. We also believe the evidence of Yousef Elias Majdalani who definitely stated that he saw her in 1923 and 1924 and once again in 1933. The evidence of these witnesses was not in any way shaken in cross-examination. We therefore find as a fact that Art. 1664 which Dr. Weinshall invokes, even assuming Beirut is at a distance of Mudat Safar, does not in any way help the Plaintiffs in their contention that their predecessor in title was absent from Haifa "Mudat Safar." Therefore the plea of prescription raised as an issue by the Defendant
 10 succeeds and is a good defence in the present action.

*In the
Land Court
Haifa.*

No. 11.
Judgment
of the Land
Court,
dated 15th
September,
1943,
continued.

We have only one more thing to add and that is that in our opinion the Plaintiffs knew at the time when they took transfer from Malakeh Touma that Hassan Zeideh the present Defendant was in actual occupation of that very land. This is clear from the endorsement on the Land Registry File in question that the Defendant was and had been for some time past paying the Werko Taxes on the land and Dr. Weinshall expressly stated in Court that Plaintiffs are claiming no better rights than their predecessor in title.

In the result therefore Plaintiffs' action is dismissed. We award
 20 Defendant costs on the higher scale and certify advocates attendance fee of LP.40.—.

25.8.43.

(Sgd.) A. A. ATALLA,
Judge.

(Sgd.) S. WELDON,
Relieving President.

Delivered this 15th day of September, 1943, in presence of Mr. Ganon, for Plaintiffs, and of I. Shapiro and George Eff. Mu'ammar, for Defendant.

Judge.

(Sgd.) S. WELDON,
Relieving President.

NOTICE AND GROUNDS OF APPEAL.

Jerusalem, 11th October, 1943.

*In the
Supreme
Court,
sitting as
a Court
of Civil
Appeal,
Jerusalem.*

IN THE SUPREME COURT, JERUSALEM.
Sitting as a Court of Civil Appeal.
Civil Appeal No. 329/43.

No. 12.
Notice and
Grounds of
Appeal,
dated 11th
October,
1943.

BETWEEN

- 1. MRS. ROSE ALEXANDER, Cairo, Egypt
 - 2. EDMOND ALEXANDER, Advocate of Cairo,
Egypt - - - - - Appellants 10
- Both represented by Messrs. M. E. Mogannam,
Khader Aweidah and G. Hiller, Advocates, Jerusalem

AND

HASSAN IBN OMAR EL ZEIDEH, landowner of
Haifa, Haifa - - - - - Respondent.

Judgment appealed from: Dated the 15th of September, 1943, given
by the Land Court of Haifa, in Land Case No. 22/35.

Appellant's Address for Service: Mogannam & Co., Advocates, Mamillah
Rd., Jerusalem.

NOTICE OF APPEAL.

20

1. On the 15th of September, 1943, the Land Court of Haifa, delivered
judgment against the Appellants in favour of the Respondent, whereby
Appellant's claim for 14 shares out of 96 shares in a plot of land situated
in the Ballan locality, Haifa, was dismissed with costs on the higher scale
and LP.40 advocates attendance fees.

2. Appellant attaches with this notice of appeal two certified copies
of the judgment appealed from, one for retention by the Court and the
other for service on the Respondent.

3. Appellant attaches also an application to the Chief Registrar
in accordance with Rule 327 of the Civil Procedure Rules, 1938, for the 30
fixing of an amount to be deposited into Court in lieu of a bond, together
with a notice that the amount so fixed has been paid under Rule 328c (ii)
of the Civil Procedure Rules, 1938, together with copies for service on the
Respondent.

4. Appellant attaches also a declaration made under the Defence
(Courts Applications) Regulations, 1940, as amended in 1941.

5. Appellant attaches also an application requesting that this appeal
may be heard by British Judges only.

6. Notice of appeal is therefore hereby filed within the legal delay
against the said judgment of the Land Court of Haifa, in Land Case 40
No. 22/35, on the following grounds.

GROUNDS OF APPEAL.

1. There was no evidence, in law, to prove that Defendant (Respondent) was in uninterrupted possession of the land in dispute over the period required for prescription.

2. The Court below was wrong in holding that the deliveries of the Execution Office of the land the subject matter of the statement of claim, to one of the co-owners in 1924 did not interrupt the period of Respondent's alleged possession of the land.

3. The Court below erred in law in its interpretation of the judgment of eviction given by the Magistrate on the 12th April, 1921 No. 270 against the Respondent and in favour of one of the co-owners, which judgment proves officially and subject to no contradiction that Respondent was a trespasser on the land in question and that he was ordered to be evicted; and so that, from that date, prescription was interrupted.

4. The Court below erred in law in holding that the subsequent dispossession of Respondent from the whole of the land in dispute in 1929 as is evidenced by Exhibit L.H.2, which was produced in Court as evidence, and accepted as such in the sitting of 25.4.41, did not interrupt the alleged subsequent possession of Respondent. This official uncontradicted document clearly states that the "whole land" was delivered to the person in who's favour judgment of eviction was given. It seems that the Court failed to appreciate the legal value of this document which clearly shows that the alleged possession of Respondent was interrupted and therefore no prescription could have been proved by Respondent in the face of this document.

5. The Court below erred in law and failed to take into consideration Exhibit R.11 which was produced on 18.4.40 and subsequently confirmed by evidence, which clearly shows that the Respondent on 8.3.22 had given an undertaking that he will not encroach on the land in dispute and that he has no right therein, which was signed by Respondent in person before a competent Police Officer, which undertaking and admission, without any shadow of doubt, interrupts the alleged possession of Respondent and brings him within Article 20 of the Land Code which prescribed that a trespasser who admits trespass cannot claim by prescription.

6. The Court below failed to take into consideration the legal effect of Exhibit P.4 dated 2.12.36, signed by Respondent and addressed to the Land Registrar, Haifa, in which Respondent admits that all previous applications made by him to prove his ownership in the land in dispute was as the agent of Michel El Shaghouri and not as his own. In this connection it is to be remembered that he had applied to register all the land in his name including the shares of Shaghouri, but was refused. Such admission together with the above documents and admissions certainly interrupt the period of prescription and estops the Respondent from claiming by adverse possession.

7. The Court below erred in law in refusing to take into consideration Exhibit S.H.2, which was a judgment in Criminal Appeal No. 27/30 District Court, Haifa, dated 3.10.30 in which Respondent was convicted for one month imprisonment or LP.5 fine for the offence of "trespassing

*In the
Supreme
Court,
sitting as
a Court
of Civil
Appeal,
Jerusalem.*

No. 12.
Notice and
Grounds of
Appeal,
dated 11th
October,
1943,
continued.

*In the
Supreme
Court,
sitting as
a Court
of Civil
Appeal,
Jerusalem.*

on the property in dispute after it had been judicially taken out of his possession.” This official document, which was admitted and not contradicted proves beyond any doubt that the alleged possession of Respondent was interrupted and therefore there can be no prescription to run in his favour. Consequently his alleged entry on the land was illegal as proved by the judgment and he is estopped from claiming that he is entitled to be on the land.

No. 12.
Notice and
Grounds of
Appeal,
dated 11th
October,
1943,
continued.

8. The Court below also erred in law in refusing to take into consideration the fact that Respondent applied to the Land Registry, Haifa in File No. 573/23 which was produced in Court before His Honour Judge Shaw, for the registration of all the land in dispute including all the shares of the co-owners and that his application for registration was refused by the Land Registry. 10

9. The Court below also erred in law in refusing to take into consideration the judgment of the Land Court, Haifa, No. 9/24 delivered on 29.9.26, which dismissed the claim of Respondent for the ownership of all the land in dispute including the shares of Appellants, which judgment was confirmed by the Supreme Court in Land Appeal No. 4/27 delivered on 20.9.27. Such judgment dismissing a claim for ownership must necessarily have its legal effect on a claim by prescription, but the Court below failed to consider such judgment. 20

10. The Court below erred in law in holding that no eviction can be considered binding unless there is physical ejection of the person of the Respondent. Such principle is fallacious as the only way the land can be delivered is to go out on the land and officially hand over the land to the person in whose favour judgment is given as required by the Execution Law and no physical process is required by law.

11. The Court below was wrong in holding that the deliveries of possession in 1924 and in 1929 did not constitute delivery to all the co-owners as against the Respondent, especially since one co-owner can sue for eviction and delivery of all the land owned by joint owners and the Court will give relief to that effect as was laid down in Land Appeal No. 29/1929 (1 P.L.R. page 422). The Court below failed absolutely to take into consideration this clear legal principle which works in favour of the Appellant in that the judgment of eviction by one co-owner, Nazira Cook, in 1921, which judgment was executed in 1924 and 1929 as stated above, was entitled to judgment and to eviction of all the land in which she was a co-owner, which in fact did take place as evidenced by the delivery reports above mentioned. The Court below therefore erred in holding that a trespasser (the Respondent) could not be ejected from the whole land in question by virtue of a judgment to this effect obtained by one of the co-owners who owns an undivided share in the land, and if this point of the Court below fails their whole judgment in that respect must be quashed and judgment given in favour of Appellants for their shares in the land as prayed in the statement of claim. 40

12. The Court below failed to take into consideration that the shares of Appellant were derived by purchase from one Malakeh Touma who in turn derived her shares by purchase from Elias Khoury Touma, her brother, and that the shares of Nazira Cook Touma were derived also from

Elias Khoury Touma, her husband. That is to say, when Nazira obtained judgment for eviction in 1921 as the wife and sister-in-law of Malakeh Touma she was acting to defend the common property of herself, her husband and his sister derived from the same title deed, and any judgment so obtained was on behalf of the family and the co-owners and it cannot be said that such judgment does not work in favour of all the co-owners, since an eviction and dispossession of certain shares in land owned in common, cannot be effected unless the eviction is from every part of the said land, being "masha," as each share in common has a right in every particle of the land in whole. It follows therefore that an eviction of certain shares in land in common must be an eviction of every part of the said land.

13. In the alternative the Court below was wrong in finding that Malakeh Touma had come to Palestine on more than one occasion so as to prevent her from claiming absence in law. The Court below refused on several occasions as shown on the record to allow Appellants to hear the evidence of Malakeh Touma on commission in spite of the fact that affidavits were filed and a medical certificate properly authenticated was produced to support the application. Such refusal by the Court was contrary to law and prejudicial to the rights of the Appellants. Had the Court below had her evidence on commission before them, they would have certainly come to a different finding both in fact and in law, and on this ground the judgment of the Court below should be set aside and the case remitted to the Land Court for re-hearing.

REQUEST.

In conclusion Appellant prays on the grounds set out above and other legal arguments which will be adduced in open Court, that the judgment of the Court below be set aside and judgment given confirming the title of Appellant to the land in dispute to 14 shares out of 96 shares in accordance with the certificate of Registration Nos. 2318 dated 28.9.33 as is more clearly defined in the statement of claim dated 3rd of April, 1935, with costs and advocate's fees both in the Court of Appeal and in the Court below.

(Sgd.) M. E. MOGANNAM,

Counsel for Appellant.

*In the
Supreme
Court,
sitting as
a Court
of Civil
Appeal,
Jerusalem.*

No. 12.
Notice and
Grounds of
Appeal,
dated 11th
October,
1943,
continued.

JUDGMENT of the Supreme Court of Palestine.

Civil Appeal No. 329/43.

IN THE SUPREME COURT
Sitting as a Court of Civil Appeal.

Before : Mr. A/Justice PLUNKETT.

*In the
Supreme
Court,
sitting as
a Court
of Civil
Appeal,
Jerusalem.*No. 13.
Judgment
of the
Supreme
Court of
Palestine,
dated 28th
July, 1944.

In the Appeal of :

1. MRS. ROSE ALEXANDER
2. EDMUND ALEXANDER Appellants

V.

10

HASSAN IBN OMAR EL ZEIDEH Respondent.

Appeal from the judgment of the Land Court of Haifa, dated the 15th of September, 1943, in Land Case No. 22/35.

For Appellants : Moghanam Eff. Moghanam and Mr. Gersh Heller.

For Respondent : Mr. Levin and Mr. Mu'ammam.

This is an appeal from a judgment of the Land Court of Haifa wherein the Plaintiffs, here the Appellants, who have claimed fourteen shares out of 96 shares in a plot of land situated in Ballan locality, was dismissed. The facts are very fully set out in the judgment of the Land Court, and it is not necessary to repeat them in detail.

20

Briefly the Appellants purchased 14 out of 96 shares in the land in question from Malakeh Touma in 1933, who had previously purchased them in 1909. Nazira Cook is a co-owner.

There were several hearings, in fact the case started in 1935 and was concluded in July, 1943. The Plaintiffs claim ownership of 14 out of 96 shares as against the Defendant. The Defendant claims that he has a prescriptive right to the land of which he has been in continuous possession since 1905. The Appellants submit that many actions and execution proceedings were taken against the Defendant by Nazira Cook, and in fact that delivery of possession of all the land was made to her by the Execution Officer, and this constitutes delivery to all co-owners. Although the Defendant did not give up physical possession, in spite of the promises to vacate, the proceedings taken against him are sufficient to interrupt his claim to prescription both in respect of Appellants' share and that of their co-owners. That according to Article 1086 and 1087 of the Mejele, in the absence of one co-owner the other is trustee for the whole of the property, and it is considered to be deposited for safe-keeping with the other. That the action for possession of one co-owner is considered for the benefit of the other co-owners. That the Respondent admitted in a criminal case that he had taken arbitrary possession, and that according to Article 20 of the Land Code there is no prescription in cases of persons taking arbitrary possession.

30

40

The question of "Muddat Saffar" was raised in respect of Malakeh Touma, who resides in Beirut, and the High Court decided on the 1st of

April, 1926, that this was a good excuse to the claim of prescription, even if she had an agent in Haifa. The appellants have made several applications to Court, which were refused to have Malakeh Touma's evidence taken on commission.

In the Supreme Court, sitting as a Court of Civil Appeal, Jerusalem.

Respondent submits that he has been in possession since 1935, and that at the time when the appellants purchased he was an owner, and the land was registered in the werko in his name. There is an endorsement on the Land Registry file that Plaintiff bought with open eyes and cannot have better title than Malakeh Touma. Malakeh Touma purchased in 10 1909, was never in possession or in any way exercised ownership over the land. She eventually sold to the Appellants, and the Appellants have based their whole case upon what Nazira Cook, the co-owner, did. Nazira Cook admittedly obtained judgment against the Defendant and tried to obtain possession, but failed. The delivery made by the Execution Office was a paper transaction, and the Respondent has never been parted from the physical possession of the land. The High Court decided that Nazira Cook could claim possession only in respect of her share.

No. 13.
Judgment of the Supreme Court of Palestine, dated 28th July, 1944, continued.

I have to consider first of all what is the legal effect of the various actions taken by Nazira Cook in respect of the co-owned property as regards the defence of prescription. These actions were taken admittedly in her own name but for the whole property. The Appellants maintain that a suit brought by a co-owner against a trespasser or person claiming possession of the whole land is a perfectly good action, and judgment should be given for recovery of the whole land. Malakeh Touma was away in Beirut, and Nazira Cook, being a co-owner, brought many proceedings against the Respondent for the recovery of the whole land. An order of possession was granted on the 12th July, 1921, for the whole land. In 1922 another complaint was made by Nazira Cook, and Respondent was convicted and fined LP.5, or one month's imprisonment, but again went 30 into possession. On 8.11.31 possession was again ordered and this decision was taken to the High Court where an order was made to dispossess the shares of Nazira Cook only, but this has no connection with the previous orders given in 1924 and 1929 for the whole land.

The Land Court, in its judgment of the 5th December, however, does not consider these various proceedings as interrupting prescription, but based its decision upon (1) Respondent was not physically ejected, and (2) ejection could only apply to the share of Nazira Cook, and not to that of the other co-owner. What happened was that the Respondent was officially dispossessed but resumed possession.

40 I do not think that it is necessary to go further into detail regarding the lengthy proceedings in this case but merely to give a decision as regards the effect of various legal proceedings taken by Nazira Cook, and whether they can be considered due to the order of the High Court in 1931 as affecting the whole land, and for the benefit of the co-owners or partners.

Firstly I consider that the action taken by Nazira Cook and subsequent formal delivery made by the Execution Officer although Respondent resumed possession on each occasion, are sufficient to interrupt the running of the period of prescription. Recovery of the whole land has been ordered and confirmed on appeal, and although the High Court subse- 50 quently made an order to a return in 1930 that the execution should proceed

*In the
Supreme
Court,
sitting as
a Court
of Civil
Appeal,
Jerusalem.*

No. 13.
Judgment
of the
Supreme
Court of
Palestine,
dated 28th
July, 1944,
continued.

only in respect of shares of Nazira Cook, I do not consider that this order invalidates or repeals any of the previous proceedings. I am satisfied, moreover that the judgment of the Land Court which is confirmed by the Court of Appeal in Land Appeal 29/29, P.L.R. Vol. 1, pages 422-423, sets out the correct interpretation of the law as applicable to this case:—

“ Can one of several co-owners sue alone for ejectment? The Mejelle defines the powers of partners jointly and severally. The Articles in question are 1643 and 1075. They state that one partner cannot represent his co-owners in respect of a property which has come to them otherwise than by inheritance, and further, that each partner is for the purpose of litigation a stranger to his co-owners when he is in the position of a Defendant. 10

We hold that this means that a suit cannot be brought against one partner as representing all the other owners—all must be made partners. The reason is that the contrary procedure would facilitate collusion—Article 1643 of the Mejelle, last paragraph, supports this view. Article 1078 Mejelle states that partners are to be regarded as strangers inter se and cannot be taken as representing one another for the purpose of disposition.

In our opinion, this refers to disposition or use of things such as clothes or other personal articles, which cannot be used by one partner without excluding the others while the user lasts. This kind of use may be prejudicial to the partners. Land is not used thus. When trespass occurs on jointly owned land, a part-owner is not prevented by any clear provision of the law from suing for the recovery of the whole. The share of such a partner is not separated, and relates to each and every part of the land. If it be held that such a suit must be confined to the undivided share owned by the Plaintiff, it becomes impossible to execute a decree for ejectment by delivery. If as a result of the suit the whole property is delivered to the Plaintiff, temporary possession of a partner is preferable to the illegal possession of a stranger, since the partner has defined interests, which is not the case with a trespassing stranger. 20 30

In this connection Articles 1075, 1077 and 1086 Mejelle should be consulted. If it be granted that the partners who do not join in the suit agree to the trespass or do not oppose it—their complaisance has no legal value. They own no defined interests which they can yield to the trespasser; they can give no leave of user to such a person where the rights of others are involved; in short, their action has no legal value whatever. 40

We consider that in such a case a suit brought by one of the partners for the recovery of the whole area, in the case in which the trespass is recent, is admissible both in law and justice.”

The above decision is supported by the law and references as set out in Goaby and Doukhan in Chapter XIII on co-ownership, and Chapter XVI, Limitation of Action, Prescription. The period of prescription is interrupted by presentation of a claim before a judge, in other words, institution of action in Court, Article 1666 Mejelle. Possession must be adverse for the whole period—and as to the effect of closure of the Courts, see Article 16 of Proclamation 42 of June, 1918. 50

It may be safely assumed that in the absence of any specific provision as to Miri, the principles of the Mulk law, as laid down in the Mejelle, would be deemed applicable also to Miri interests.

The question of the manner of dealing with jointly owned property is set out in the Mejelle Section II, Hooper's translation, page 277 and onwards.

I am in complete agreement with the views expressed in the Judgment of the lower Court in Land Appeal 29/29, and in my opinion a joint owner is in the position of a trustee for an absent joint-owner, and may sue to
 10 preserve the rights of the joint-owners in the whole property, and that any such action is sufficient to prevent and interrupt the period of prescription running against the absent joint owner. The period of prescription could not, therefore, start to run in this case until possibly 1930, when the High Court ordered execution to be made only in respect of the share of Nazira Cook. Since the present action was instituted in 1935 the question of prescription cannot arise from the period after 1930.

I must say here that I cannot agree with the order made by the High Court, and I feel that it is based rather on the assumption that the joint-owner was injuring the land, not as in this case protecting it.
 20 Such an order in my opinion could only be made when the subject to be executed is possibly a judgment against one of the co-owners personally, whereas in this case the judgment was in favour of the joint-owner against a trespasser and in respect of the whole undivided property. In any case this order cannot have any effect upon the previous judgments in the case.

For the above reasons I hold that when a trespass occurs on jointly owned land, one joint owner is entitled to sue and obtain judgment for the recovery of the whole ; that the proceedings taken by Nazira Cook against the Respondent do interrupt the running of the period of prescription against the joint owners and their predecessor in title, Malakeh Touma ;
 30 that the Respondent was dispossessed on several occasions, although he subsequently renewed possession ; that the claim by the Appellants that no prescription could run while she was at a distance of " Muddat Saffar " is established ; that as set out in the judgment of the District Court, page 6, Respondent's possession is established as from 1917. This will be the earliest date, therefore, under consideration and is affected by the proceedings taken by the joint-owner, Nazira Cook, 1920-21 onwards.

The judgment of the District Court is set aside and judgment entered for the Appellants confirming their title to the land, 14 out of 96 shares, in accordance with certificates of registration, No. 2318, dated 28.9.33,
 40 and the Defendant is not entitled to contest their ownership.

Costs here and below on the higher scale and LP.15 advocate's attendance fee for appearing in this appeal, the advocate's fees in the Court below is reversed.

Delivered this 28th day of July, 1944.

(Sgd.) O. PLUNKETT,

A/British Puisne Judge.

*In the
Supreme
Court,
sitting as
a Court
of Civil
Appeal,
Jerusalem.*

—
No. 13.
Judgment
of the
Supreme
Court of
Palestine,
dated 28th
July, 1944,
continued.

*In the
Supreme
Court,
sitting as
a Court
of Civil
Appeal,
Jerusalem.*

No. 14.

ORDER.

Privy Council Leave Application No. 14/44.

IN THE SUPREME COURT.
Sitting as a Court of Civil Appeal.

No. 14.
Order,
dated 27th
February,
1945.

Before : Mr. Justice EDWARDS.

In the Application of :

HASSAN IBN EL OMAR ZEIDEH Applicant

V.

ROSE ALEXANDER and EDMUND ALEXANDER Respondents 10

Application for conditional leave to appeal to His Majesty in Council from the judgment of the Supreme Court sitting as a Court of Civil Appeal dated 28th July, 1944, in C.A.329/43.

For Applicant : Mr. A. Wittkowski.

For Respondents : Mr. G. Hiller.

The advocate for the Respondent to the application who opposes the grant of conditional leave to appeal to His Majesty in Council contends that, although he does not dispute the fact that the value of the land in question is over LP.500, nevertheless the ownership is not in dispute, and that, therefore, the matter does not come under Art. 3 (A), Palestine 20 (Appeal to Privy Council) Order in Council, 1924. The fact is, however, that this Court held that his clients were entitled to recover this land from the present Applicant. In my view, there can be no doubt that the result of the judgment of this Court of the 28th July, 1944, was to enable the present Respondents to recover the possession of land worth over LP.500. I hold, therefore, that an appeal lies under Art. 3 (A).

The Applicant's advocate has applied for stay of execution pending the appeal. In view of the decision of this Court in P.C.L.A. No. 13/38, Vol. 6, P.L.R. p. 72, I think that I am entitled to grant a stay.

The judgment of this Court of 28th July, 1944, will accordingly 30 be stayed.

Given this 27th day of February, 1945.

(Sgd.) D. EDWARDS,

British Puisne Judge.

No. 15.

ORDER granting Final Leave to Appeal.

Privy Council Leave Application No. 14/44.

IN THE SUPREME COURT

Sitting as a Court of Civil Appeal.

Before : THE CHIEF JUSTICE (Sir WILLIAM FITZGERALD), Mr. Justice FRUMKIN and Mr. Justice ABDULHADI.

In the Application of :

HASSAN IBN OMAR EL ZEIDEH - Applicant

V.

ROSE and EDMUND ALEXANDER - Respondents .

*In the
Supreme
Court,
sitting as
a Court of
Civil
Appeal,
Jerusalem.*No. 15.
Order
granting
final leave
to appeal,
dated 6th
June, 1945.

Application for final leave to appeal to His Majesty in Council against the judgment of the Supreme Court sitting as a Court of Civil Appeal dated 28th July, 1944, in C.A. No. 329/43.

For Applicant : Mr. I. Stoyanovsky.

For Respondents : Mr. G. Hiller.

WHEREAS by order of this Court dated the 23rd day of March, 1945, the Applicant was granted conditional leave to appeal to His Majesty in Council, subject to the following conditions :—

20 (i) That the Appellant do enter within two months of the date of this order into a bank guarantee from one of the three banks, Barclays, Ottoman or Anglo-Palestine, in a sum of LP.300 effective for three years or more, for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondents in the event of the Appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the Appellant to pay the Respondents' costs of the appeal (as the case may be) ;

30 (ii) That the Appellant do take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within two months of the date of this order.

AND WHEREAS the Applicant has fulfilled the said conditions in that he has filed a guarantee in this Court in the sum of LP.300 as a security and has filed a list of the documents which should constitute the file to be despatched to England, and has further applied for the settlement thereof, and the parties have appeared before the A/Chief Registrar of this Court for the settlement thereof, which record has been settled.

40 NOW THEREFORE the Court orders, and it is hereby ordered, in pursuance of Article 21 of the Palestine (Appeal to Privy Council) Order-in-Council, that final leave to appeal to His Majesty in Council be granted to Applicant.

Given this 6th day of June, 1945.

(Sgd.) W. J. FITZGERALD,
Chief Justice.G. FRUMKIN,
Puisne Judge.ABDULHADI,
Puisne Judge.

*Exhibits.***EXHIBITS.**

D/2.
 Hijjah
 Sharieh of
 Abdo Jabr,
 dated
 9 Nissan
 1332
 (Maliyeh)
 April, 1915.

D/2.

HIJJEH SHARIEH OF ABDO JABR, dated 9 Nissan 1332 (Maliyeh).

(Translation from the Arabic.)

In the Legal Council convened in the Court of Haifa District, there appeared Qasem and Abdulhaziz sons of Ahmad Al Aswad the inhabitants of Haifa who are known personally. They declared that there is under their possession, ploughing, planting, walling, the whole plot of land which is walled with stones situated in the Ishlut El-Khabieh locality in the eastern direction of Haifa which is bounded as follows :—

10

South : The stream of water

East : The land of Fuad Sa'ad

North : Road

West : The land of Hassan Hawwari,

and by virtue of this full right they had sold and transferred the said plot of land which is bounded as mentioned above, as a final sale to Mr. Said Ibn Shahhen el-Jaber and Miss Adel bint Habibi el-Sai'kali of the inhabitants of Nazareth, in consideration of 20 Ottoman Pounds, specifically cashed in their hands in full and complete, and to discharge the liability of the purchaser from any right arising thereon, and on their behalf, they had appointed Mr. Abdo Ibn Shaheen el-Jaber and of the inhabitants of Haifa, who was present with them in the Council, to carry out every transaction on the land for the registration in the Land Registry, for the issue of Tabu Extracts in this land, to appear before the Land Registrar, of Haifa, to admit the sale and the transfer mentioned above, to admit the receipt of the abovementioned consideration and discharge, to carry out every transaction, to sign every document, irrevocable power of attorney for investing the purchaser's right therein, and whenever they remove him, he is an absolute attorney authorizing him to act and to do according to his opinion. This document is valid from the time it was made in the presence of Mohammad Abdel Fattah El-Yasmin and Sheikh Younis Ibn El-Sheikh Ismail El-Slbi of Haifa.

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Upon request it was made this 19th day of Jamad El Akhar, 1334 ;
 9th April, 332.

(stamps) Dated 13th April, 1332.

ATTESTED COPY OF RECORD of Criminal Case 270/21, before Magistrate's Court, Haifa. *Exhibits.*

(Translation from Arabic.)

Criminal No. 270/921.

Attested
copy of
record of
Criminal
Case 270/21,
before
Magis-
trate's
Court,
Haifa,
dated
11/12th
April, 1921.

One of the accused Abdo Shahin replied that I am taking into possession the plot of land in the locality of Ishloul el Khabi since nearly six years, and in view of my not being the owner and have no connection with this matter, and that its owner is my wife, Adla bint Habib el Seiqali and my brother Said Shahin and that my taking into possession of the said land is on their behalf only, and this is the truth.

10 The 2nd accused Hussein Ibn El Haj Omar replied that in view of the fact that the Turkish Government had 14 years ago publicly notified the opening of the Mewat lands, I opened this land, cleaned it and planted trees, which are 8 years old. When questioned, he replied that the area of the plot of land which I have opened is 16,000 dra' approximately. Its locality is called Jurn el Khabieh and Kharoubat el Za'rour. There are no documents at all in my possession.

20 Accused Mahmud Abed : replied that since 14 years he had heard that the Government had ordered that there would be no objection to anyone of the inhabitants desiring to revive the Mewat lands. At that time I went to the plot of land known as Ishloul el Khabi and began to work in it, to remove its stones and improve it by cleaning. I even planted fig trees on it, and their ages are now 10 or more years. I am till now gathering the fruits. When questioned he said—I don't know the boundaries by directions, but I know that my neighbours in the land are : The Jews, El Haj Abed Ikrimin, Yusef el Kurdi and Hassan el Zeideh. When questioned he replied : Its area is nearly five dunams and I cultivate it and plant it without any objection at all.

30 Accused Elias replied—I have taken possession, with one of the accused—Hussien, about 16,000 dra' in the locality of Ishloul el Khabi, in part with Hassan Hussein in question, and that was 14 years ago. We opened it as other people, and there is no document in our hands. We planted trees on it.

40 Inspection Report : In pursuance of the order made requiring the carrying out of an inspection of the land in dispute between the plaintiff, Nazira Bint Mikhail Touma, of the inhabitants of Beirut, and the accused, Mr. Elias Inkiri and his partners, I proceeded to the said land in Haifa, in the locality El Billan, bounded on the West by Antoun el Khoury, on the East a road, on the south Muhammad Taha and on the North Hanna Atalla and Bishara Mudawwar. When comparing the Land Registry Title Deed in the hands of the Plaintiff in the presence of the two parties, the two experts and the former Land Registrar, Elias Eff. El Dakhil, it appeared clearly that the said land with its present boundaries as per the deed, applies to the deed and the boundaries. Its area—on estimation—amounts to 16,000 dra', and is surrounded by a dry stone wall. It is not suitable either for cultivation or plantation. The locality called Al Billan (that means thorns) is applicable to the name mentioned in the deeds. It is understood that this land belongs to a man called Abu El Sha'ar of Beirut, who is one of the relatives of the Plaintiff,

Exhibits.

Attested
copy of
record of
Criminal
Case 270/21,
before
Magis-
trate's
Court,
Haifa,
dated
11/12th
April, 1921,
continued.

and that it came to the Plaintiff by way of purchase, and that the accused are taking possession of the land in an illegal manner and that there are owners entitled to the land as has been verified from the inspection.

In witness whereof this report has been made out by me on 11th April, 1921.

(Sgd.) JAWDAT,
Magistrate.

From the proceedings in the case it appeared that the complainant, Nazira Bint Mikhail Cook, alleged that she had a plot of land within the lands of Haifa, registered in the Land Registry of Haifa by virtue of a Tabu Kushan dated Kanun Awal 33, No. 5, Vol. 88, Folio 59, comprising 12 dunums, and that the accused—Abed and Shahin Jaber and Hassan Ibn El Haj Omar El Zeideh and Mahmud Abed Ibn Hassan El Hamdan and Elias Ibn Wahbeh Inkeiri and Yusef el Kurdi, all of Haifa,—have taken possession of the plot. From an inspection of the plot, it appeared clearly that the land which was taken possession of by some of the complainants—Abdo and Mahmud ad Yusef—was not of the land of the Plaintiff, but that the other Defendants—Elias and Hassan only—have taken possession of the said land. And whereas it has been proved during the hearing of the case that it is a civil rather than a criminal case, therefore, in the absence of a “criminal” offence necessitating punishment, I hold that they are not liable for what has been alleged them; and Hassan and Elias are warned to take their hands off the land, not to interfere with her and to deliver it to the complainant Nazira: and they are further warned not to change anything on the land, which should remain in its present state. Hassan and Elias shall have the right to follow the legal course in this connection before the competent Court which will go into the question of ownership and possession when it occurs.

Judgment in presence, subject to appeal, publicly delivered in the presence of both parties this 12th day of April, 1921.

(Sgd.) JAWDAT,
Magistrate.

AFFIDAVIT.

I, the undersigned, advocate JAWDAT KAZIMI, of Jerusalem, hereby make oath and say as follows:—

1. That the contents of the foregoing copy of part of the record and the report of inspection, taken from a certified copy from the registry of the District Court of Haifa on 11.7.40 and copied from Criminal Case No. 270/921 of the Magistrate's Court of Haifa, are, to my belief, correct.
2. That the signature “Jawdat, Magistrate Haifa” appearing at the bottom of the inspection report, dated 11.4.1921, and the judgment copied from the original copy of the criminal case, is, in my belief, my signature which I affixed in my capacity as Magistrate of Haifa on 12th April, 1921.

3. That I therefore declare that the particulars of the record and the inspection as they appear hereinabove are correct, believing in the genuineness thereof to my knowledge and recollection.

(Sgd.) JAWDAT KAZIMI.

Sworn before me, Ali Zein El Abdin, Magistrate of Jerusalem this 29th day of October, 1942.

(Sgd.) ALI ZEIN EL ABDIN.

(Seal of the Magistrate's Court, Jerusalem.)

Exhibits.
—
Attested
copy of
record of
Criminal
Case 270/21,
before
Magis-
trate's
Court,
Haifa,
dated
11/12th
April, 1921,
continued.

D/3.

EXTRACT from Land Registry, Haifa, 21st February 1922.

LAND REGISTRY OFFICE OF HAIFA

REGISTER OF DEEDS

VOLUME No. 6 Fol. 88.

Town or Village : Haifa.

Situation or Quarter : El-Khaby.

Street & No. on door Petition No. 261 of year 1921.

No. of Deed	Date of Registration	Class of Land	Boundaries	Area		Nature of Transaction	Name of Grantor	Name of Grantee	Share	Consideration or Value £E	Remarks
				Donums	Diraas						
218	3. 3.22	Planted Miri	N : Hasan El-Zaydeh & Youssif El-Kurdy. E : Abid Ekramied & Hussain Amis. S : Road W : Road	—	8164	Registration by Bedl-Misl	—	Tewfik Ebn Mustafa Pasha El-Khalil & Ahmad Awad & Mohd Eid	1/3 1/3 1/3	40	Auth. Dir. of Lands of 1.11.21 This plot has been sold to the P.L.D.C. under deed No. 1021/23 dated 15.10.23
148	21. 2.22	Do.	N : Road E : Wady S : Youssif Abdullah and Hassan El-Zaydy W : Hassan El-Zaydy	5	127	Do.	—	Abdu and Saieed & Saleem sons of Shahin El Jaber	1/3 1/3 1/3	25	Auth Dir. of Lands of 30.1.22 S : Ashloul El-Khabieh P : 459/20 V. 6. F. 44
618	11.11.21	Miri	N : Abdu Shaheen & Bros E : Abdu Shaheen & Bros S : Mahmoud Abu Ead. W : Hassan Omar El-Zaydy	1	1051	Registration	—	Yousef El Abdullah El-Ajamy	in whole	10	S : Mairawan P : 456/20 V : 4. F. 71

True Copy of Original Pt. 27 collected under Receipt No. 57890

(Sgd.) Illegible

(Sgd.) Illegible
Clerk

dated 26 June, 1924

Registrar of Lands

(Sgd.) Illegible
Clerk

P. 3—R. 11.

Exhibits.

CERTIFIED COPY of a Petition by George Farazli to Magistrate, Haifa, with undertaking by Hassan Zeideh before the Police Inspector.

(Translation from Arabic.)

To the Magistrate, Haifa.

I, the undersigned, George Farazli, agent of Mr. Elias el Khoury Touma and his wife Nazira bint Mikhail Kook, beg to state that my said principals, are the holders of a judgment (I'lam) issued by your Court on 12.4.1921 against Hassan Ibn Omar El-Zeideh and Elias Wahbeh
 10 Inkkari, ordering their dispossession from the land, the property of my above-named principals, situate at Billan locality in Haifa, as they had forcibly taken possession thereof. Whereas taking advantage of my absence lately on my agricultural work in Beisan, one of the Defendants, i.e. the afore-named Hassan el Zeideh, planted beans and other cereals in the said land and erected a wooden hut thereon, I therefore hereby apply to you for an order to the Police to prevent the aforesaid from constructing and to summon him to your Court and punish him as provided for by law.
 28th February, 1922.

(Sgd.) GEORGE FARAZLI,

20

on behalf of ELIAS KHOURY TOUMA
 and his wife NAZIRA.

Referred to the Police Department to carry on the necessary investigation so that if the existence of a judgment of a Judge preventing possession by the trespasser be proved, he should be prevented from taking possession and a criminal case lodged. 7.3.22.

(Sgd.) OMAR HASSAN.

I, whose thumbprint appears hereunder, Hassan Ibn Omar el Zeideh, declare that as from to-day—following the order given me by the Police Department—I have no right to trespass upon the land situate at Billan
 30 locality, and that I accept to be punished in the event of my trespassing upon the said land.

8.3.22. (Sgd.) EMIL ZAKKA,
 Witness.

Thumbprint of :

HASSAN OMAR EL ZEIDEH.

To the Magistrate, Haifa.

In accordance with the order, the afore-mentioned was summoned and this undertaking was taken and I therefore forward it to your worship.

(Sgd.) EMIL SAKKA,

Inspector of Police, Haifa.

This copy agreed with an original copy produced by Mr. Leon Mousa
 40 Levy resident of Haifa. It has been issued at his request and was handed to him for acting thereon after it has been duly checked and after a copy of the said original copy duly signed by the producer was retained in this office and after the fees had been collected in accordance with Articles 53

P/3 - R/11.
 Certified copy of a petition by George Farazli to Magistrate, Haifa, with undertaking by Hassan Zeideh before the Police Inspector, dated 8th March, 1922.

Exhibits. and 89 of the law of Notary Public. It has, therefore, been duly certified by me I Elias son of Hanna Khattar Notary Public of the District Court of the Northern District.

P/3 - R/11.
Certified copy of a petition by George Farazli to Magistrate, Haifa, with undertaking by Hassan Zeideh before the Police Inspector, dated 8th March, 1922,
continued.

5 fees for copy.
2 quarter fees.
7 total.
3.5 stamps.
10.5 total ten piasters and a half.
12 October.

Stamps.

(Sgd.) ELIAS KHATTAR,

Court Revenue Stamps, 4681 Nov. 1923 Notary Public 10 Haifa.

(Sgd.) ELIAS KHATTAR.

This copy agrees with its original copy which is produced in Land Registry File No. 573/23 under Exh. No. 13.

D/17.

CERTIFIED COPY of Extract from Register of Urban Property Tax.

(Translation from Arabic.)

PARTICULARS OF THE PROPERTY EXTRACT FROM THE SCHEDULES OF THE HAIFA PROPERTY TAX.

Block	Parcel	Name	Category	Locality	Annual Rent LP. Mls.	
64	3	Hasan Haj Omar Zaydi	Land with 25 wooden barracks on.	Hadar Hacarmel	262	20
67	88	„ „	Land with one wooden barrack on	Khawabi	006	
67	89	„ „	Land with 1 room and appurtenances	„	007	
67	90	„ „	Land with one wooden room on	„	003	30

I have made this true copy, upon the request of advocate George Mu'ammam, the petitioner, this 13th day of November, 1933.

MUDEER MAL

Werko Officer.

(Sgd.) Illegible
Revenue Officer.

(Sgd.) Illegible.

20.11.33.

Revenue Stamp.

L.H.1.

CERTIFIED TRUE COPY of Report of Dispossession in Execution File No. 4199/28.

(Translation.)

No. of Case 4199/28, Execution
Office of the Magistrate's
Court, Haifa.

Exhibits.

L.H.1.
Certified
true copy
of Report of
Dispossession in
Execution
File No.
4199/28,
dated 31st
May, 1924.

In accordance with the order given by the Chief Execution Officer, Haifa, for the dispossession of the Defendant Hassan El Zeideh from the plot of land shown on Land Registry Extract No. 5, Vol. 59, of an area of 12 dunams Atik Warlikin, I proceeded on this day, accompanied by P.C. George Majjadali, not numbered, the Mukhtar Muhammad Abu El-Nasser and Dr. Weinshall, advocate of the Plaintiff, to the land. I stood on the four boundaries—North, road; East, Jubran Anton El-Khoury; South, road; West, road between him and Rakhil; and made the delivery to the attorney of the judgment-creditor. Owing to the absence of the Defendant, no eviction was carried out of the room and kitchen built on the plot of land; but the wife of the Defendant, with the guarantee of the Mukhtar, the aforesaid Muhammad Eff., undertook to vacate the place and deliver the keys on Monday, 2nd June, 1924, at 8 a.m. If this be not done, legal action will be taken. Advocate of Plaintiff agreed to the delay.

Accordingly, their signatures were obtained hereunder.

This 31st day of May, 1924.

(Sgd.) —

Eviction Clerk.

„ MUHAMMAD ABU NASSER,
Mukhtar.

„ DR. A. WEINSHALL,
Advocate of Plaintiff.

„ GEORGE MAJJADALI, P.C.
AYSHEH wife of Hassan El Zeideh
(—)

„ MUHAMMAD ABU NASSER,
Authorised to fix the signature.

Exhibits.

D/15.

CERTIFIED COPY of Report by J. Grad.

D/15.
 Certified
 copy of
 Report by
 J. Grad,
 dated 24th
 July, 1924.

Land Court,
 Haifa.

Subject : Inspection of trees of Khabieh Land.

I the undersigned the Agriculture Assistant of Haifa District have inspected the trees on the a/m land on the 22nd inst.

I saw there eight almond trees the age of which are 6 years. Thirty-three fig trees eight to fourteen years old. Nine very old carub trees. Twenty-four olive trees five of which are from three to six years old and 10 the rest two years old. One eucalyptus tree one year old. Three zanzalak trees five to six years old. Two apricot trees from four to five years old.

JOSEPH GRAD,
 Ag. Asst.

Haifa.

24.7.24.

This is a certified copy of the original kept in file No. 573/23 under folio 27.

(Sgd.) Illegible. 20

21.7.43.

50 Mils Stamp.

Land Registry of Haifa.

TRUE COPY of Original Power of Attorney in Magistrate's Court File No. 2729/32, created by Malakeh Khoury Touma.

(Translation from Arabic.)

On the date hereunder, I the undersigned, Malaka, daughter of El Khouri Tuma, residing at Beirut hereby authorise and appoint Raja Bey Rayyis to act on my behalf, to claim and plead in the actions on my behalf and against me respectively, with any other person, in any Court or Department whether Magistrate's, District or Supreme Courts, or Tamyeez, or Da'way, and to ask for retrial of the case, and object to any judgment delivered in my absence, and to ask for attachment, and affidavits, and to submit what is necessary of applications, statements, or documents, notices, or summonses, and to ask for execution or anything in connection with what has been mentioned and which could be legally authorised.

I have also authorised him to act on my behalf to sell and transfer anything I owe or possess, namely 3000 square Dira's out of 20,000 Sw. Dira's, situated at Ballan locality, Haifa, the boundaries of which are known, vide the Tabu Kushans kept with the said attorney, a final and absolute sale, and transfer to any person he wishes for any price he wishes, and to receive the said purchase price and deliver it to me; and to complete what is necessary for these legal transactions, in its positive place, and being confirmed by the commissioner of Tabu; as a general power of attorney, unlimited, subject to his will, saying and act, authorising him to appoint or authorise any person he wishes for all or part of what he has been authorised to carry out, and to revoke any person whom he had authorised at any time he wishes.

In witness whereof, I have set my hand this 19th day of November, 1924.

(Sgd.) TEWFIK KANHA.

30 (Sgd.) FARID AGHA.

(Sgd.) MALAKA KHOURI.

(Sgd.) YOUSEF IBRAHIM.

Public No. 5939.

Private No. 2416.

On Wednesday, the 21st day of Rabi' Tani, 343, the 19th day of November, 1924, Malakeh daughter of el Khoury Mikhail Tuma, as identified by the above signed witnesses, came to the Notary Office at the Law Courts, Beirut, and signed in my presence and that of the said witnesses, in confirmation of this power of attorney, having been made to understand the contents thereof, and agreed upon them.

40 I Notary clerk, Tewfik, Haj Mustafa, Alameh, do hereby confirm this power of attorney as a true one.

Stamp of Notary Beirut.

(Sgd.) T. ALAMEH,

Notary Clerk, Beirut. 19/11/24.

(In French.)

Vu pour legalisation de la signature apposee ci contre de M. Tewfik M. Allame, Notare de Beyrouth.

Beyrouth le 19 Novembre 1924.

D/12.
True copy of original Power of Attorney in Magistrate's Court File No. 2729/32 created by Malakeh Khoury Touma, 19th November 1924.

R/12.

CERTIFIED COPY of Supreme Court Judgment in Land Appeal No. 76/25.

Exhibits.
 R/12.
 Certified
 copy of
 Supreme
 Court
 Judgment
 in Land
 Appeal
 No. 76/25,
 dated 1st
 April, 1926.

IN THE SUPREME COURT.

Sitting as a Court of Appeal, Jerusalem.

Before : Mr. Justice CORRIE, Mr. Justice JARALLAH, and Mr. Justice
 FRANCIS KHAYAT.

In the Case of :—

ELIAS WAHBEH ENKIRI

GEORGE FARAZLI, representative of Mrs. Nazira
 Thomas, Haifa

Appellants 10

V.

HUSSEIN IBN EL HAJ OMAR ZEIDEH, Haifa
 NAZIRA wife of Elias El-Khoury

Respondents

Appeal from the judgment in presence of the Land Court of Haifa, upholding the ownership of the Plaintiff Hassan of a plot of land situate at Mauka' El-Bilan, on the eastern side, situation and boundaries whereof are given in the statement of claim, and ordering registration thereof in his name in the Land Registry and payment by Defendants of costs and expenses and LP.10 advocate's fees. Whereas the third party has agreed with Plaintiff on the differences between them by arbitration, this Court therefore does not consider it necessary to enter into the case of the third party. 20

JUDGMENT.

Particulars of Case : Hassan Ibn El Haj Omar El Zeideh sued the Defendant Nazira Thomas through her agent George Eff. Farazli claiming registration of a plot of land which is now recorded in the name of the Defendant into his own name and an order preventing her from interfering with him alleging that it was he who developed the land and planted trees thereon, and that he has been in possession thereof since a period exceeding ten years without interference or dispute. Later a third party—Elias Wahbeh Inkeiri—appeared, alleging he had half of the land because he had participated with the Plaintiff in the development and possession thereof for a period exceeding the prescriptive period. 30

The District Court sitting as a Land Court upheld the ownership of the Plaintiff and ordered the registration of the land in his name upon proof of his possession for a period exceeding the prescriptive period, and did not consider the absence of the Defendant in Beirut as being one of the excuses which break prescription, for the reason that Haifa was attached to Beirut, and because she had an agent in Haifa during her absence. And it did not deal with the right of the third party because of his having come to an agreement with the Plaintiff over the difference between them by way of arbitration. 40

The Court, therefore, is of opinion :—

1. That the judgment awarding the whole land to the Plaintiff is premature inasmuch as the dispute between him and the third party regarding the moiety depends upon the determination thereof by way of arbitration, which is still pending.

2. That to consider Haifa and Beirut as being one Wilayet does not prevent the Court from fixing the distance between them and taking the absence into account as an excuse in conformity with the provisions of the Mejelle inasmuch as the presence of an agent of the absentee does not prevent her from claiming absence as an excuse breaking prescription.

3. That so long as the land in dispute stands originally registered in the name of the Defendant and the action of Haq El Qarar is directed against her, it is essential to go into her pleadings in defence of Plaintiff's action.

The judgment of the lower Court is therefore set aside and the case remitted for the Court to go into the points stated.

Delivered in open Court this 1st day of April, 1926.

Acting Chief Justice.

I hereby certify that this is a true copy of the original as entered in the register of judgments.

(Sgd.) MURRAY M. JACK,

Chief Registrar.

Exhibits.

R/12.
Certified
copy of
Supreme
Court
Judgment
in Land
Appeal
No. 76/25,
dated 1st
April, 1926,
continued.

R.13.

CERTIFIED COPY of Judgment of Land Court, Haifa, in Land Case No. 9/24.

(Translation.)

Land Case No. 9/24.

IN THE LAND COURT OF HAIFA.

Before : His Honour Judge LITT (President) and Judge HASNA.

In the Case of :

30 HASSAN ABU EL IIAJ OMAR ZEIDEH, of
Haifa Plaintiff

V.

GEORGE FARAZLI, on behalf of Nazira, wife
of Elias Khoury Defendant

and

ELIAS WAHBE ENKIRI - Third Party.

R/13.
Certified
copy of
judgment
of Land
Court,
Haifa, in
Land Case
No. 9/24,
dated 29th
September,
1926.

JUDGMENT.

After having heard the statements and sayings of both parties, according to what the Court of Appeal has ordered, it was found that the parties have decided that the distance between Beirut and Haifa is 165 kms.

Exhibits.
 R/13.
 Certified
 copy of
 judgment
 of Land
 Court,
 Haifa, in
 Land Case
 No. 9/24,
 dated 29th
 September,
 1926,
continued.

and this distance is more than three days i.e. a walk of 18 hours on the camel as provided by Art. 1664 of the Mejelle. This being so, the Court holds that the Defendant was absent all this period in Beirut and she had no knowledge about the possession of the Plaintiff of the land in claim previously, and on getting knowledge she brought an action in the Magistrate's Court for his dispossession, and in this way there is no prescription in this case. Therefore and whereas the said land is registered in the name of the Defendant and her partners, and whereas the Plaintiff has no right to claim the registration of the said land into his name owing to the grounds mentioned above, and similarly the 3rd party, therefore 10 it is decided to dismiss Plaintiff's case and the application of the said 3rd party ordering Plaintiff to pay costs and expenses and LP.10 advocate's fees.

Judgment in presence and subject to appeal.

Delivered in due course this 29th day of September, 1926.

(Sgd.) W. G. LITT, President.

„ ALI HASNA, Member.

R/14.
 Certified
 copy of
 Supreme
 Court
 Judgment
 in Land
 Appeal
 No. 4/27,
 dated 20th
 September,
 1927.

CERTIFIED COPY of Supreme Court Judgment in Land Appeal No. 4/27.

Land Appeal No. 4/1927. 20

IN THE SUPREME COURT
 Sitting as a Court of Appeal.

Before : THE SENIOR BRITISH JUDGE, Mr. Justice KHALDI, and
 Mr. Justice FRANCIS KHAYAT.

In the Case of :

HASSAN IBN OMAR EL-ZEIDEH Appellant

V.

NAZIRA wife of Elias Khoury and ELIAS
 ENKIRI - - - - - Respondents

And in the Case of :

ELIAS ENKIRI - - Appellant

V.

NAZIRI wife of Elias Khoury Respondent.

Appeals from the judgment of the Land Court of Haifa, dated the 29th September, 1926.

JUDGMENT.

On hearing arguments on behalf of all parties, the Court dismisses both appeals with costs and confirms the judgment of the Land Court of Haifa.

Delivered in presence of all parties this 20th day of September, 1927. 40

(Sgd.) O. C. K. CORRIE,

Senior British Judge.

D/19.

CERTIFIED COPY of Dr. Weinshall's Application.*Exhibits.*

D/19.
 Certified
 copy of Dr.
 Weinshall's
 application,
 dated 31st
 December,
 1928.

To the Ch. Ex. Officer,
 Haifa.

Haifa, 31st December, 1928.

Sir,

Subject : Nazira Cook *vs.* Hassan El-Zaydeh & Elias Inkiri
 (Ex. file No. 4199/28).

On or about the 7th of December, 1928, the following application has been submitted by me on behalf of Mrs. Nazira Cook, my client :—

10 “ 1. Hassan El-Zaydeh & Elias W. Inkiri have been condemned by the Magistrate's Court to quit the place belonging to the Applicant in virtue of the judgment given in the criminal case No. 270/21 dated 12.4.21 submitted in the present execution file.”

 “ 2. As it appears from the minutes of the execution proceedings, the said Hassan El-Zaydeh was already ordered to quit the place on 15.5.24.”

20 “ 3. In view of the action brought by the said Hassan El-Zaydeh & Elias Inkiri (the latter as 3rd Party) against the Applicant before the Land Court, Haifa, the said execution proceedings have been temporarily discontinued.”

 “ 4. The said land case was finally decided in favour of the Applicant against the said Hassan El-Zaydeh & Elias Inkiri, whose claim for ownership has been dismissed, as it appears from the judgments attached (which are already lodged with the Execution Office under No. 4160/28).”

 “ Therefore I beg to request that the execution formalities be proceeded with and Hassan El-Zeideh & Elias W. Inkiri be compelled to leave the place belonging to the Applicant.”

30 As no reply has been given in respect of that application until now, and as any delay in execution of the judgment referred to in the said application is very prejudicial to the rights of my client, I beg to request that the execution formalities be proceeded with and Hassan El-Zaydeh & Elias W. Inkiri be ordered to leave the place of my said client without unnecessary delay.

I have the honour to be,

Sir,

Your obedient servant,

(Sgd.) A. W. WEINSHALL

for Nazira Cook.

40 Certified true copy of an application filed in Execution file No. 4199/28.
 Compared.

(Sgd.) Illegible. 30.7.43.

(Sgd.) Illegible.

Execution Officer

Haifa

30.7.43.

Aces-110 mils paid
 R. No. 349278 of 30.7.43
 initials.

Exhibits.

L.H.2.
True copy
of another
Report of
Dispossession in the
same
Execution
file, dated
8th April,
1929.

L.H.2.

TRUE COPY of Another Report of Dispossession in the same Execution File.

IN THE DISTRICT COURT OF HAIFA.

Execution Office.

File No. 4199 of '28.

REPORT OF DELIVERY OF LAND.

In pursuance of the order made by the Chief Execution Officer on the 1st March, 1929 concerning the delivery of the land, judgment having been given against the Defendants Mr. Elias Ankiri and Hassan El Zeideh, both of Haifa, in favour of judgment-creditor Mrs. Nazira daughter of 10 Michail Kook, a resident of Beirut, I proceeded at 3.30 o'clock on Monday, the 8th April, 1929, accompanied by the process server of the District Court of Haifa, Jamil Eff. Abu Zalaf, and Mr. Glovatsky, representing the advocate of the judgment-creditor, and the architect Mr. Moshe Bochovitzky, and Mr. Aharon Tweig, to the land which is situate at the Bilan locality, in the neighbourhood of Hadar Hacarmel Quarter, Haifa, the situation and boundaries whereof are described in Land Registry Extract No. 5 Vol. 59 Folio 88. On considering the land with its locality and boundaries, it was found that it was bounded : North—Road ; East : 20 Abdo Shahin, now Yusef Nagri ; South—Private road separating the Land Development Co. ; West :—A road separating Dakhil, now Harboneh, and which also now includes (the same land) a new road. The area of the land is about 10,000 square metres in accordance with the plan in possession of the representative of the judgment-creditor's advocate above named. There were also found on the land a number of various buildings and the names of the inhabitants.

1. A small stone hut occupied by Hassan El Zeideh.
2. A tin barrack occupied by Hassan Hussein El-Nabils.
3. A wooden and corrugated iron hut and wooden kitchen occupied 30 by Menachem Mizrahi.
4. A stone house (? room) and kitchen occupied by Hassan Zeideh.
5. A stone room occupied by Hussein El Muhammad.
6. A similar stone room occupied by Ahmad Ibn Kassem el Sheikh.
7. Two wooden connected barracks and stone room with these two barracks occupied by Ali El Abdallah and his brother Muhammad El Abdallah.

Upon counting the trees planted in the land aforesaid, the nature and quantity thereof were found to be as follows :—

Number.	Nature.	
11	Olive saplings	40
	Small	
33	Fig trees	
4	Carob trees	
2	Accacia trees	
3	Almond trees	
1	Quinine tree	
—		
54		
1	Anbara tree	
1	Zaher Hanna	
1	Lemon tree	50
—		
57		
—		

Total : Fifty seven trees only.

A part of the land was also found to be sown with barley on the part of one of the judgment debtors, Hassan el Zeideh.

Exhibits.

Therefore, and in conformity with the order aforesaid of the Chief Execution Officer, the whole land was delivered to the aforementioned judgment-creditor: and the necessary warning was given to one of the judgment-debtors present, Mr. Elias Ankiri, and to the wife of the second, absent, judgment debtor, Hassan el Zeideh, that whoever trespasses upon the said land as from this date, will be liable to legal action.

L.H.2.
True copy of another Report of Dispossession in the same Execution file, dated 8th April, 1929, continued.

In witness whereof the present report was drawn up signed by us
10 in the proper way this 8th day of April, 1929.

Witness: (Sgd.) AHARON TWEIG. (Sgd.) ? Engineer.

(Sgd.) G. GLOVATSKY, representing Judgment-creditor's advocate.

(Sgd.) JAMIL ABU ZALAF, process server of the District Court, Haifa.

(Sgd.) RASHID BARHOUM, Assistant Execution Officer, Haifa.

D/23

HIGH COURT ORDER in High Court 12/30.

High Court 12 of 1930.

IN THE SUPREME COURT.

20 Sitting as a High Court of Justice.

Before the Senior Puisne Judge Mr. Justice FRUMKIN and
Mr. Justice KHAYAT.

D/23.
High Court Order in High Court 12/30, dated 3rd April, 1930.

In the application of

Ex parte HASSAN ZEIDEH - - Petitioner

V.

THE CHIEF EXECUTION OFFICER
HAIFA Respondent.

Application for an Order to issue to Respondent directing stay of Execution.

30 JUDGMENT.

After perusal of the judgments of Magistrate's Courts produced by Petitioner and after hearing Mr. Mughanam on behalf of Petitioner the petition is dismissed.

The Order of this Court dated 28th February, 1930, for stay of Execution is set aside.

Delivered this 3rd day of April, 1930.

(Sgd.) O. C. K. CARRIE,
British Puisne Judge.

Exhibits.

F.H.1.

TRUE COPY of the Entry in the Register of Criminal Cases of the Magistrate's Court, Haifa, in respect of Case No. 698/30.

F.H.1.
True copy
of the entry
in the
Register of
Criminal
Cases of the
Magis-
trate's
Court,
Haifa, in
respect of
Case No.
698/30,
dated 29th
May, 1930.

(Translation from Arabic.)

Copy from the Register of Criminal Cases, 1930.

Case No. : 698/30.

Complainant : Nazira daughter of Mikhail Cook of Beyrouth.

Accused : Hassan Omar Zeideh of Haifa.

The offence : Resuming possession after judicial delivery.

Article : 130.

The judgment : One month imprisonment and payment of 400 mils fees. 10

Given in presence dated 29.5.30.

Appeal : On 30.5.30 appeal made. Judgment confirmed unanimously
to pay fees LP.5 or one month imprisonment and the fees. Judgment
on appeal dated 3.10.30.

Certified true copy,

Chief Clerk,

Magistrate Court,
Haifa.

D/20.

Certified
copy of
applica-
tion by
Hassan
Zeideh in
Execution
File No.
4199/28
dated 1st
July, 1930.

D.20.

20

CERTIFIED COPY of Application by Hassan Zeideh in Execution File No. 4199/28.

(Translation from the Arabic.)

His Honour,

The Chief Execution Officer,

Haifa.

Applicant : Hassan El Zeideh.

It has come to my knowledge that Miss Nazirah Cook through her
Attorney Advocate Fouad Bey Atallah, is following the execution of the
judgment given by the Magistrate's Court in Criminal Case given in the
year 1921, and she claims the delivery of the whole land which is in my 30
possession, and

WHEREAS the said Nazirah Cook does own some 9 shares by virtue
of the Tabo Extract, and

WHEREAS the said land was not partitioned, and

WHEREAS it is impossible to deliver the whole land so long as there
is nothing intelligible in this respect,

I THEREFORE PRAY for the stay of the execution of the judgment
on the whole land, because she is insisting on its execution, and I am
prepared to deliver to her the nine partitioned shares if she so desires.

With respects. 40

Thumbprint of

Dated 1.7.30.

HASSAN ZEIDEH.

Permitted to sign

For execution.

MAHMOUR DAOUD.

(Sgd.) ALI HASNA.

Certified true copy of the original found in File No. 4199/28 Execution
Office, Haifa.

(Sgd.) Illegible.

Execution Officer,

Haifa. 50

S.H.2.

CERTIFIED COPY of Judgment in Cr. A. 27/30.

(Translation from Arabic.)

Criminal Appeal 27/30.

HASSAN OMAR EL ZEIDEH

Appellant

V.

REX

Respondent.

*Exhibits.*S.H.2.
Certified
copy of
Judgment
in Cr. A.
27/30, 3rd
October,
1930.

10 Upon perusing the judgment of the Magistrate's Court appealed against dated 29.5.1930 ordering the imprisonment of the Appellant one month and the payment of fees for having made an offence of resuming possession of immovable property after it has been judicially taken out of his possession etc. by taking possession of the plot of land situated in Ballan locality at Haifa belonging to Nazira daughter of Mikhail Cook after it has been decided to dispossess him therefrom and after the same has been delivered to Nazira mentioned above through the Execution Officer of Haifa, it appeared to be in conformity with the law therefore it is unanimously decided to confirm the said judgment and correct it by fining the Appellant with LP.5 or imprisonment for one month in case of non-payment of the fine and to order him to pay the fees.

20 Delivered on 3.10.30.

(Sgd.) O. PLUNKETT, President.

,, MUHAMMAD SAID, Judge.

,, ALI HASNA, Judge.

Exhibits.

D/22.

HIGH COURT ORDER in High Court 67/31.

High Court No. 67/31.

D/22.
High Court
Order in
High Court
67/31,
dated 25th
February,
1932.

IN THE SUPREME COURT.

Sitting as a High Court of Justice.

Before : Mr. Justice BAKER and Mr. Justice FRUMKIN.

In the Application of :—

HASSAN HAJ OMAR EL-ZEIDEH - - Petitioner.

V.

1. THE CHIEF EXECUTION OFFICER, Haifa 10
2. NAZIRA COOK Respondents.

Application for an order to issue to the first Respondent directing him to show cause why his order dated 8th November, 1931, should not be set aside.

JUDGMENT.

The Order Nisi issued by this Court on the 28th January, 1932, is hereby made absolute.

2. The Chief Execution Officer in the District Court of Haifa is hereby restrained from ordering or causing the judgment of the Magistrate's Court of Haifa No. 270 dated 12th April, 1921, to be executed in respect of the whole land, but execution should be confined to such share or shares of the said land as the said Nazira Cook may be entitled to under the Kushan upon which her claim in the Magistrate's Court of Haifa was based. 20

The second Respondent is ordered to pay the costs and advocate's fees assessed at LP.4.

Delivered this 25th day of February, 1932.

(Sgd.) F. H. BAKER,
Puisne Judge.

IN THE DISTRICT COURT HAIFA. 30

Checked and found
correct.

I hereby certify that this is a true copy
of the original.

(Sgd.) Illegible.

(Sgd.) Illegible.

Fees 220 mils paid
under rec. No. 280760
of 14.5.43.

Chief Clerk—Registrar.

D/4.

Exhibits.

CERTIFIED COPY of Mukhtar's Certificate in Land Registry File No. 1521/33.

(Translation from Arabic.)

LAND REGISTRY OFFICE OF HAIFA.

CERTIFICATE OF MUKHTAR, OR IMAM AND NOTABLES.

Sub-District : Haifa.

Petition No.

Village or Town : Haifa.

D/4.
 Certified
 copy of
 Mukhtar's
 Certificate
 in Land
 Registry
 File No.
 1521/33,
 26th
 September,
 1933.

I, MALAKEH BINT EL-KHOURY TOUMA of (Residence and Nationality) Beirut (or . . . the duly authorised agent of . . . by power
 10 of attorney dated . . .) issued at . . . for myself declare that I am (or that . . . is) the person in whose name the immovable property described in Kushan No. . . . and dated September 325 is registered in the books of the Land Registry Office at Haifa as Miri Malsa and that I am the owner of the said property by virtue of the said Kushan and my title is derived from lawful purchase and I declare that the said property comprises a plot of miri land of $12\frac{1}{2}$ dunams and is known as Ballan Locality. Bounded East : Saleh, to-day Gabriel Anton Khoury.

West : an opposite road and Khalil.

North : Hanna Atallah and Bishara Mudawwar, to-day road.

20 South : Atallah and Mudawwar and to-day Mohammad Taha. and that no documents of title are concealed. And I further declare that there are no incumbrances upon the said property except and that his share in the said land is $3\frac{1}{2}/24$ and registered in the Werko under Block 64, Parcel 3.

(Signature) of Owner.

(Sgd.) MALAKEH BINT KHOURY TOUMA.

We, Salim Matar Mukhtar of the Greek Orthodox Community in Haifa and Yousef Majdalani Andrawos El-Sayeh, notables of Haifa,
 30 certify that we know the above-mentioned Mrs. Malakeh Bint Khoury Touma and that they sealed or signed the above statement and that from our knowledge the statement is correct.
 Date 26.9.33.

(Sgd.) Notables

ANDRAWOS EL-SAYEH.

(Sgd.) YOUSEF MAJDALANI.

Seal and Signature of Mukhtar
 SALIM MATAR.

The Mukhtar Salim Matar who affixed his signature and seal and the notables Andrawos El-Sayeh and Yousef Majdalani have all signed in
 40 my presence.

Stamp : 50 Mils.

(Sgd.) Illegible.

Confirmed true copy of the Mukhtar Certificate found in File No. 1521/33.

D/5.

Exhibits.

D/5.
 Certified
 copy of
 Werko
 Certificate
 in Land
 Registry
 File No.
 1521/33,
 27th
 September,
 1933.

CERTIFIED COPY of Werko Certificate in Land Registry File No. 1521/33.

Land 22/35.

(Translation.)

**CERTIFICATE FROM THE WERKO OFFICER REGARDING THE
 TRANSACTION OF THE IMMOVABLE PROPERTY.**

File No. 1521/33.

Particulars of the Entries :

District : Haifa.

Town or Village : Haifa. 10

Locality : Hadar Hacarmel.

No : Block 64, Parcel 3.

Category of Property : Land.

Area : 7276 Square Metres.

Vendor : Malak Khouri registered in name of Hasan Haj Omar
 el Zaydeh.

Purchaser : Rosa Indrawis Toma and Idmond Iskandar, Said Street
 No. 9, Heliopolis.

I hereby certify that all the fees imposed on the above-mentioned
 property since March 1st, 1918, up till this date have been received. 20

Place : Haifa.

27.9.33.

(Sgd.) Werko Officer,

Haifa District,

Sadeddin Eff.

I certify that this is a true copy of the transaction No. 1521/33 given
 against 100 mils fees vide receipt No. 417441 dated 6.1.38.

(Sgd.) Illegible.

6.1.38.

A.

Exhibits.

EXTRACT of Registration No. 2318 dated 28.9.1933, from the Land Registry, Haifa, referred to in the Statement of Claim and therein marked "A."

LAND REGISTRY OFFICE OF HAIFA.

REGISTER OF DEEDS.

Folio No. 196

Extract No. 29/1022/35

Town or Village : Haifa

Petition No. 1521 of year 33

Volume No. 47

Situation or Quarter : Billan

10 No. of Deed : 2318

Date of Registration : 28.9.33

Class of Land : Miri

Description of Property : Plain Land

Boundaries : N. Hanna Atalla & Bishara Mudawar, today road

S. Atalla & Mudawar, today Mohd. Taha

E. E. Salha today Gubrail Anton Khoury

W. Road opposite Dakhil

Area : 11 Dunom 491.25 M2

Nature of Transaction : Sale

20 Name of Grantor : Malakeh bint El Khoury Touma

Name of Grantee :	Shares	Consideration or value LP. Mils
Roza bint Andrawies Touma wife of Dr. Tewfic Iskandar, and Edmond ben Elias Iskandar	7/96	600.-
	7/96	600.-

Remarks :—

The above is a true copy of the Register and is given against Payment
30 of LP.0.110 Mils as per receipt No. 305939 of 3.4.35.

Date : 3.4.35.

Stamps : 50 Mils

(Sgd.) Illegible
for Registrar of Lands.

P/1.
Plan of
Land
referred to
in State-
ment of
Claim
marked
" B."

P/1.

PLAN OF LAND referred to in the Statement of Claim therein marked " B."

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF PALESTINE, SITTING AS A COURT OF APPEAL.

BETWEEN

HASSAN IBN OMAR EL ZEIDEH - - - *Appellant*

AND

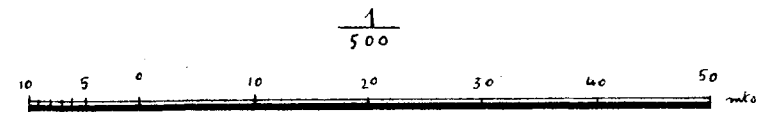
ROSE and EDMUND ALEXANDER - - - *Respondents.*

RECORD OF PROCEEDINGS.

HERBERT OPPENHEIMER, NATHAN & VANDYK,
20 COPTHALL AVENUE,
LONDON WALL, E.C.2,
Solicitors for the Appellant.

T. L. WILSON & CO.,
6 WESTMINSTER PALACE CHAMBERS,
VICTORIA STREET,
LONDON, S.W.1,
Solicitors for the Respondents.

LAND OF NAZIRA COOK & oth HAIFA



Handwritten notes: 85/12/11 1977, 55/12/35, and a signature.

P.I.

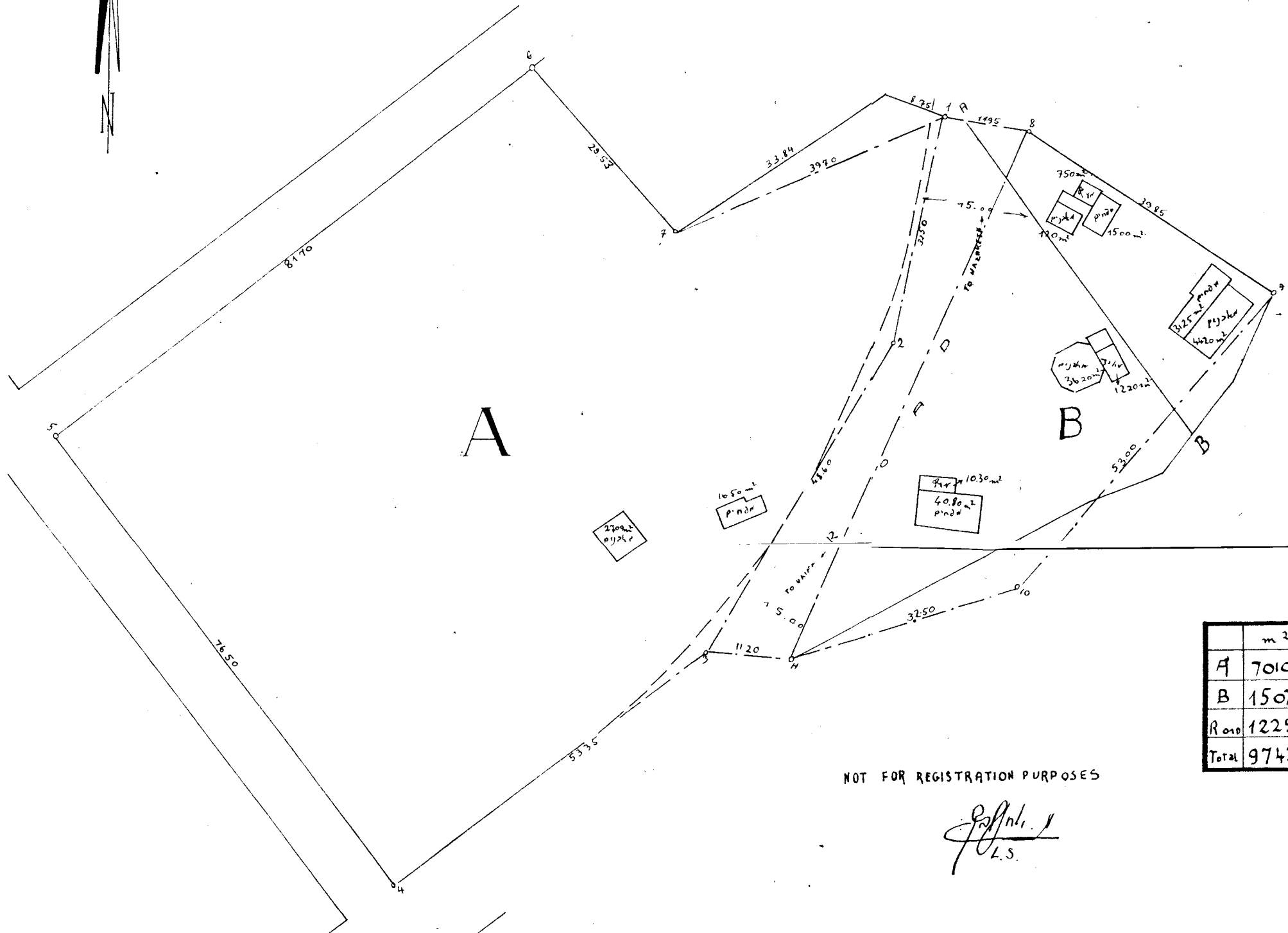


Table with 4 columns: Parcel, m², Duh, and m². Rows include A, B, R ons, and Total.

NOT FOR REGISTRATION PURPOSES

Signature and initials L.S.

P/4.

Exhibits.

CERTIFIED COPY of a Document signed by Hassan Zeideh in Land Registry File No. 3765/35, Haifa.

P/4.

Certified copy of a document signed by Hassan Zeideh in Land Registry, File No. 3765/35, Haifa, dated 2nd December, 1936.

(Translation.)

The Registrar of Lands,
Haifa.

Whereas Mikhail esh Shaghouri owns 2½ kirats in the plot of land registered in Vol. 47, Folio 196, situated at Mauka' El-Bilan, comprising an area of 11 dunams and 496 metres and he has been the real possessor of the said land ever since its purchase on 11th September, 1929, in his aforesaid number of shares, and I have no connection with or any rights in his aforesaid shares whatsoever: and all the applications heretofore submitted by me to prove my ownership of the said land referred to the other shares in this land. Further, I was agent of Mikhail Esh-Shaghouri aforesaid from the date of purchase and until this date. I claim no rights in the shares of Mikhail Esh-Shaghouri nor do I object to the sale by him to any other person.

2nd December, 1936.

Thumbprint of HASSAN OMAR EL ZEIDEH

20

Authorised to sign and witness thereto—

(Sgd.) ———

(Sgd.) GEORGE MU'AMMAR, witness

„ JOSEPH KARAM

Signed by Hassan Zeideh by affixing his thumbprint after having been read to him in the presence of the two witnesses and identifiers—advocate George Mu'ammam and Joseph Karam.

2.12.36

(Sgd.) SAMI EL DEEB

Registrar of Lands.

The above is a true copy of the original filed in Land Registry file No. 3765/35 marked No. 11.

(Sgd.) ———

Seal of the Land Registry of Haifa

(50 Mils Revenue Stamp)

100 Mils fees collected against receipt No. 417727 of 18.1.38.

101/63/38

(Sgd.)

*Exhibits.***D/16.****TRUE COPY of Werko Register—Extract of Billan Locality.**

(Translation from Arabic.)

D/16.
 True copy
 of Werko
 Register—
 Extract of
 Billan
 Locality,
 dated 22nd
 July, 1943.

**COPY OF THE EXTRACT OF THE OLD WERKO IN FORCE
 BEFORE 1932.**

Upon referring to the register of the Moslem Community, which was in force before 1932, Folio 149, I found that on the name of Hasan Omar Zaydeh there is registered a small room in Ballan locality at Wadi Teeni, constructed in 1338 and cost 2000 piastres.

Upon the request of Advocate George Mu'ammar we have given this 10 extract, which is a true copy of the original one, this 22nd day of July, 1943.

(Sgd.) Illegible
 Tax Clerk

(Sgd.) Illegible
 Revenue Section
 Haifa

Revenue Officer.
